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HEARINGS

Before The

COMMITTEE ON AIR AND WATER POLLUTION

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

WATER POLLUTION

ENVIRONMENTAL FINANCING AUTHORITY

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EXECUTIVE SESSION

Washington, D. C.

JULY 21, 1971

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EXECUTIVE SESSION

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WATER POLLUTION
ENVIRONMENTAL FINANCING AUTHORITY

- - -

Wednesday, July 21, 1971

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United States Senate,
Subcommittee on Air and Water
Pollution of the Committee
on Public Works,
Washington, D. C.

The subcommittee met at 10:20 a.m., pursuant to call, in
room 4110 New Senate Office Building, Senator Edmund S. Muskie
(chairman of the subcommittee) presiding.

Present: Senators Muskie, Randolph, Eagleton, Tunney,
Bentsen, Boggs, Cooper, Beall, and Buckley.

Also present: M. Barry Meyer, Counsel; Thomas C. Jorling,
Minority Counsel; Leon G. Billings, and Harold H. Brayman, Pro-
fessional Staff members.

Senator Muskie. I thought we might start following the
agenda that we have. Items 1 and 2, pages 7, 8 and 9, starting
at page 7. The first item has to do with 100% program grants to
the states. Beginning with line 48, page 7, and going through
line 15, page 8. I gather the Administration has dissenting
views on this, and I would like to have the Staff present them.

1 Mr. Jorling. The Administration recognizes the need for
2 assistance to the state program to implement the requirements
3 that are going to be placed under this Act. They would prefer
4 rather than have a flat 100% grant with no criteria for perform-
5 ance for otherwise control over the state program, that they
6 would suggest, and they are going to submit language to us today,
7 a different kind of formula which would, as I understand it, be
8 structured as follows:

9 That the first year, there would be a very high Federal
10 share, something less than 100%, but more than 75%. And at high
11 Federal appropriation level with increasing Federal share over
12 time with the same appropriation levels so that hopefully the
13 states will then pick up and retain their programs at the same
14 level as they are initially guineaded up by the high Federal
15 contribution in the first year. They see the need in the first
16 two years for the most state performance, and therefore, would
17 structure it accordingly. They felt that the inability of the
18 Federal Government to award money to the states on the formulas
19 presented in the Staff print should be modified and again are
20 going to suggest language which will do that.

21 So, I think, I don't know what Leon's feeling is on it,
22 but I think he would concur that we might want to defer on that
23 until we see their actual language on Subsection(e) of the Staff
24 print which appears on page 8. Actually, the bulk of it appears
25 on page 8, but it begins on page 7.

1 Senator Muskie. Didn't Leon tell me yesterday that the
2 states are complaining that we didn't provide them program
3 grants under the Air Bill?

4 Mr. Jorling. We did provide program grants, but the fund-
5 ing level has not been as high as the authorization, and the
6 state legislatures have not been coming up with increased share
7 to warrant eligibility for increased Federal share, and both
8 together are producing a sequence where the states are not get-
9 ting fully funded.

10 On that point, the Administration asked for \$12,000,000
11 additional money in the '72 request. The Committee recommended
12 it, and amendment of Senator Randolph, which was cosponsored by
13 Senator Boggs and yourself, increased it by another ten. So,
14 now there will be an additional \$22,000,000, if the Conference
15 adopts the Senate Bill. \$22,000,000 available for stage pro-
16 grams which should help some in alleviating the problem under
17 the Air Act. But, the first year, the year the states are re-
18 quired to present implementation plans, their funding levels are
19 still less than adequate.

20 Senator Muskie. What was the level authorized, a 100%?

21 Mr. Jorling. No, it was a formula grant, and I have to
22 check the formula, but I think it is 75% planning grants and
23 3/5 program grant for maintenance of the program.

24 Senator Muskie. For new services or overall program?

25 Mr. Jorling. Overall program. There is no distinction

1 between requirements placed under Air Act Amendments between
2 those elements ongoing.

3 Senator Muskie. So what we have here is an alternative, a
4 100% of the cost of new functions, or 75% of all functions,
5 whichever is greater.

6 Mr. Jorling. Yes.

7 Senator Muskie. If we chose the second, 75% compares to
8 the 3/5 that we have in the Air Bill, is that right?

9 Mr. Jorling. That is right.

10 The way the formula is written now would operate this way.
11 The small states in the sense of a program would take advantage
12 of the 100% grant. The large states, California, New York and
13 Massachusetts, with large programs ongoing, would take advantage
14 of the 75% total grant, because their programs are so
15 large that 75% of the total would be larger value than a 100%
16 of the increased proportion. So that they would prefer, they
17 would take advantage under this of the 75% grant rather than a
18 100% grant.

19 Senator Muskie. I am somewhat concerned that if the states
20 see a declining Federal support in the formula that we write,
21 that that might just as effectively inhibit them from getting
22 involved as though we started out with a low level of Federal
23 support. They accuse us now of prodding them to begin the pro-
24 grams, and then, dropping them off.

25 Mr. Jorling. I think when the Administration was

1 confronted with that argument, they said that would be offset
2 by maintaining a high Federal level of assistance so that the
3 gross amount of assistance received by the state would remain
4 relatively the same. It is just that their program would have
5 to be increased to take advantage of that assistance. The ac-
6 tual share of the Federal Government of the entire program would
7 be reduced. The number of dollars would remain the same.

8 Senator Buckley. Mr. Chairman, does anyone have any guess
9 what we are talking about in terms of the annual level?

10 Mr. Billings. The Administration suggested, and I think,
11 Senator Buckley, it was off the cuff, \$30,000,000 annual level.

12 Senator Buckley. Thank you.

13 Senator Muskie. The whole philosophy of the 100% is to
14 prod the states to move in and get the programs started. And
15 we are really asking for them to perform a Federal function in
16 a sense and to use their personnel to implement Federal policy
17 and it isn't all that costly for the Federal Government, whereas,
18 it could be a burden to the state.

19 Senator Boggs. Let me interrupt. Senator Cooper is tied
20 up in the Rules Committee, and he will be here shortly.

21 Senator Muskie. Since the Administration language is not
22 yet available, I think simply having discussed the issue, that
23 we ought to wait for that language before we judge finally.
24 And, if there are no further discussions of this point --

25 Senator Boggs. Right in this area, Mr. Chairman, and Leon,

1 the language in the Bill now would cut off entirely a state
2 program grant from the Federal Government, if the state failed
3 to spend the same amount of funds on its water pollution con-
4 trol program as it did a year earlier. That is on page 6, Sec-
5 tion 4 language. "No such state of intrastate agency shall
6 receive any grants under" and so forth. The states believe this
7 language is particularly restrictive, discouraging greater
8 operating efficiency. They believe, I say they, this comes
9 from my state, they believe the key should be a program's effec-
10 tiveness, not the size of the program budget.

11 The proposed language would require that the Administrator
12 determine a state's program has been reduced in effectiveness
13 before he cut off the funds. And they have an amendment here,
14 page 6, line 37, "insert comma after when, then strike remain-
15 der of the paragraph and insert 'in the judgment of the Admin-
16 istrator, the state of intrastate agency has curtailed the ex-
17 tent and effectiveness of the water pollution control program."

18 I submit that for consideration.

19 Senator Muskie. Well, I am troubled by one point. That
20 standard could presumably be met if a state simply used the
21 Federal dollars to substitute for state dollars. In other words,
22 the standard of effectiveness before and after the Federal as-
23 sistance could be the same.

24 Senator Boggs. What they were looking toward was this
25 situation where a state has been moving forward and spending its

1 state dollars and doing a good job, but for some reason or
2 other, this particular legislative session did not come up in
3 1972 with as much as, maybe a little bit less than it did in
4 '71 or '70 or something like that.

5 Senator Muskie. I understand that point, and I have no
6 great quarrel with it, but what troubles me about the language
7 is that it might result in that interpretation and if there was
8 a complete substitute of Federal for state dollars.

9 Senator Buckley. New York had similar problems with this
10 provision and suggested a proportionate reduction because our
11 state has been doing a tremendous job and presumably, they don't
12 have to maintain the same effort as they did. They also pointed
13 out in some points, such as California regions to which some of
14 these responsibilities are going to be taken.

15 Senator Muskie. This is a program grant section.

16 Mr. Jorling. The State of California had the same objec-
17 tions. They suggested an amendment that, rather than trigger
18 it on reduction of expenditure during preceding fiscal year,
19 would average the three preceding fiscal years of the states
20 expenditures in the measurement of maintenance of effort, and
21 they feel that would accommodate any cycles in the state caused
22 by state legislatures or planning and research grant peaks that
23 might be misleading.

24 Senator Boggs. I would not hold out for any particular
25 language that would be acceptable to me.

1 Mr. Billings. There was a third alternative proposed.
2 At the present time, about \$40,000,000 is being spent each year
3 on a program by the states including \$10,000,000 of Federal
4 funds which means the states are out spending \$3 to every Fed-
5 eral \$1. The average Federal grant for program should be about
6 50%, so it should be a two-to-two ratio. The Administration
7 suggested or someone suggested, that the maintenance of effort
8 be based on not falling below the level that the state should
9 be putting up. In other words, if the states share is supposed
10 to be 50% and they are putting up 75% now, they are not to be
11 allowed to fall below 50% level.

12 Senator Muskie. What if we were to write in the phrase,
13 "maintenance of effort".

14 How would that be interpreted, instead of keying it di-
15 rectly to expenditure levels?

16 Senator Boggs. And leave the Administrator to make that
17 determination?

18 Senator Muskie. And have him make the decision as to
19 whether or not there is a maintenance of state effort.

20 Senator Boggs. And then in the report, describe why we
21 put that language there. I see nothing wrong with that.

22 Senator Muskie. That is what you are all driving at, and
23 I have no objection to that concept. We will ask the state to
24 try to put together some language that incorporates that test
25 with the report language that will explain it, making these

1 points that have been raised.

2 Senator Boggs. On page 6, again, if I may, Mr. Chairman,
3 I get to the Delaware River Basin Commission, with which New
4 York is a member too. That is the same problem, all right.
5 Thank you. I have heard from both the state and the Commission
6 on that point.

7 Senator Muskie. Then the next item on the agenda is con-
8 struction grants on page 9. The formula is on the bottom of
9 the page, beginning line 41, and that is it. It is a very
10 simple seven line paragraph, but a very key issue. As you
11 recall, the proposal is that the amount of the grant be 60% of
12 the estimated reasonable cost, except that the amount shall be
13 increased to 75%, and that the state agrees to pay by grant,
14 not less than 15% of the cost. As we originally proposed it,
15 straight 75% Federal grant, we are urged to consider by several
16 states, retaining an incentive to the states to continue their
17 participation at some level. And, so we reduce the straight
18 Federal participation to 60% which takes into account the pres-
19 ent practice of giving credit to states not only for grants,
20 but for loans. That was a sticky problem I thought.

21 I don't know how the other would react to it. And then
22 adding another 15% of Federal assistance if the state matches
23 that by grant.

24 Senator Bentsen. Are they given credit for loans?

25 Senator Muskie. They are. We had intended grants originally

1 but apparently, the language is susceptible to that interpre-
2 tation which has been made administratively, so that now states
3 which provide assistance in the form of grants or states which
4 provide assistance in the form of loans, get the same Federal
5 assistance.

6 Senator Bentsen. I understood what the situation was be-
7 fore. Will this language allow credit for loans or not? Are
8 we changing it back to the grant provision?

9 Mr. Billings. That is right.

10 Senator Bentsen. Isn't it true that in Texas, we are not
11 allowed a grant provision?

12 Senator Muskie. Let me say this, Lloyd, the effect of this
13 by giving 60% Federal grant, will not cut back Federal assis-
14 tance to those states who have been getting credit for loans.
15 That is the effect of it.

16 Senator Bentsen. I understand, but it will not provide
17 any additional 15% when they do it by the loan basis.

18 Senator Muskie. Now, they are getting an additional 25%
19 above thirty.

20 Senator Bentsen. They are getting fifty-five.

21 Senator Muskie. Well, 20% above thirty because the addi-
22 tional 5% is regional. So, we are not disturbing that. So,
23 in other words, we raise the figure to 60% so that all states
24 get a straight 60%, and we don't have any argument about whether
25 or not we are cutting back now on states that are getting loan

1 assistance so we have wiped out that problem with that formula.
2 Then for those states who want to continue to get grants' as-
3 sistance, we give another 15%. But we make it clear that it is
4 grants that we are soliciting.

5 Senator Bentsen. I understand that. But, I think our
6 problem in Texas is that after they got this interpretation out
7 of EPA, the State Legislature met and moved on the loan pro-
8 visions and they have done it and now the Legislature is out
9 of session, and we are on a two year situation down there. I
10 don't know how they come back in and qualify for the additional
11 15% now. They can't.

12 Mr. Billings. What would happen in essence, unless the
13 Legislature met and reversed it after the effective date of
14 this Act, the communities would be getting 60% Federal, 25%
15 state in the form of a loan, and the communities would be re-
16 quired to put up 15%.

17 Senator Bentsen. Well, the point I am getting to is that
18 they cannot qualify for the additional 15% from the Federal
19 Government by the loan route.

20 Senator Muskie. No, but they are not deprived of anything
21 they had. They are getting all of the Federal money and more.

22 Senator Bentsen. I understand that. But, they don't get
23 that extra bonus.

24 Mr. Jorling. There would also be a 10% reduction in the
25 amount that the state would have to pay by grants. In other

1 words, now it is an obligation that the state contribute 25%.
2 This would limit that to 15% by grant and would spread those
3 states like New York and other large granting states. It would
4 spread the state money much further and make it go further.

5 Senator Muskie. It would even spread the loan money much
6 further. There is a benefit to the communities here, and the
7 state is not deprived of anything that it has expressed a wil-
8 lingness to provide before. It is just that the Federal Govern-
9 ment is providing something on top of it all.

10 Senator Buckley. Mr. Chairman, there is one effect of this
11 new provision that is to reduce under optimum provisions what
12 municipalities came up with from 15% to 10% which seems to re-
13 ward those municipalities that have been heel-draggers.

14 Senator Muskie. That is the effect of any Federal grant
15 program. The states that have been leading in whatever area,
16 that argument is always raised and it is always true. It is
17 our national objective to simulate the movement of this program
18 in a way that deals with the problem and unfortunately, that
19 is true.

20 Mr. Billings. I think, Senator Buckley --

21 Senator Muskie. What we have done here to cover that so
22 far as the period going back to 1965 or '66, is to provide full
23 reimbursement to every state up to the standard of Federal sup-
24 port that we have had up to now. So, that it is a maximum of
25 55%.

1 Senator Buckely. But, if every two years, we come up with
2 new legislation that further decreases the amount required for
3 municipalities, don't we then create pressure on municipalities
4 to drag heels?

5 Senator Muskie. That was the argument in '66, and we
6 passed that legislation which drastically increased Federal sup-
7 port and I don't think there is any evidence that they have
8 waited during this five year period for this new Bill. There is
9 no evidence of that. The delay, if any, has been rather due
10 to failure of the Federal Government to fund that Bill rather
11 than to any anticipation of more generous Federal treatment. It
12 is an argument that is made and it does not impress me as much
13 as the first time I heard it several years ago.

14 Senator Tunney. What are the cost estimates, Mr. Chairman,
15 of the reimbursement provision?

16 Mr. Billings. The Administration anticipates that the re-
17 imbursement provision, as drafted in the print, not as Senator
18 Eagleton will propose to amend, cost \$400,000,000.

19 Senator Tunney. And that \$400,000,000 will, as I under-
20 stand the language of the legislation, not build any new water
21 treatment works, it will just pay off obligations that have
22 been incurred by municipalities?

23 Mr. Billings. It will pay off the obligations incurred,
24 for example, and by the way, \$400,000,000 is low, I think it
25 should be 1.53 billion because if you take the New York

1 situation, they, alone, have requested reimbursement in excess
2 of \$400,000,000; I believe, \$900,000,000. The State of Mary-
3 land has requested reimbursements on the order of \$150,000,000,
4 I believe, or something like that. So, I think that figure is
5 low. But, in any event, there are obligations to reimburse
6 those, and then there would be the additional amount that would
7 be going to communities that are not eligible for 55% grants
8 because of failure of the state to match which would be a con-
9 siderably smaller amount.

10 Senator Buckley. The \$400,000,000 would be the new ob-
11 ligation incurred under this language.

12 Mr. Billings. All right.

13 Senator Muskie. The feature we have been talking about is
14 \$400,000,000. The other reimbursement is what they are entitled
15 to under present law.

16 Mr. Billings. But, we would have to make a specific au-
17 thorization for it in the law.

18 Senator Muskie. I understand, but it is not a new obli-
19 gation.

20 Mr. Jorling. The actual expenditure of those funds is left
21 to the states, and it has an option of either funding new con-
22 struction, or to retire indebtedness, but the state is given
23 the flexibility of how it is to allocate the reimbursable por-
24 tion.

25 Senator Tunney. So, it potentially could provide for new

1 water treatment works.

2 Senator Muskie. The Administration has a position on this
3 that we ought to have before us.

4 Mr. Billings. The Administration is opposed to the re-
5 imbursement provision.

6 Senator Muskie. I am talking about the program grant.

7 Mr. Brayman. The Administration's position is that they
8 support the existing formula, 30-40-50, plus 10% above that.
9 They argue that essentially a 75% grant, which presumably most
10 of these will be, would tend to encourage communities to over-
11 build their capacities and build beyond what they will need
12 over any existing period. I think it is my understanding that
13 probably they would not resist too hard the 75% figure if there
14 was pretty strong language in there giving the right of the EPA
15 Administrator to turn down a facility which they feel is over-
16 built, and make them conform to, make the community build a
17 facility that EPA thinks is needed. They also, I think, feel
18 fairly strongly that if you provide for 75%, three billion dol-
19 lars, probably, I don't think they would support anything more
20 than that figure as an authorized figure, because their study
21 has shown that four billion dollars a year total money Federal
22 and state, would cut into the backlog and cure the problem in
23 four or five years.

24 Senator Muskie. We can look at that issue separately. So,
25 as I understand then, if I may recapitulate, they go along with

1 this construction grant formula if it is clear that there is
2 some control over over-building.

3 Mr. Brayman. I think reluctantly, they would. But I think
4 one other point, Mr. Chairman, I think they also would once
5 again strongly like to recommend their viewpoint on the allo-
6 cation formula rather than the state population allocation
7 formula that is in this Bill. Their allocation formula is half
8 on population, a third on need, and 20% on those states that
9 had a program grant of their own, and it is more of an insens-
10 itive allocation program than the state population formula.

11 Mr. Billings. That would free up about 45% of the money
12 to be allocated on basis of Administration determination as
13 opposed to population formula.

14 Senator Bentsen. Does that also mean that you have more
15 objective judgment and the Administrator has authority?

16 Mr. Billings. The Administrator would have authority to
17 allocate 25% of the funds. And, with contract authority, that
18 would be an allocation not based on appropriation, but on the
19 basis of the enactment of this law so there would be no further
20 cross-check.

21 Senator Muskie. Let's focus on the formula for the mo-
22 ment, because that is the one issue before us on page 9. Does
23 the Staff see any problems on tying this to some safeguards
24 in over-building. I am really not that alarmed about the states
25 over-building. It still involves local men, even if it is only

1 10% or 15%, and I don't find any evidence that the municipalities
2 are eager to spend more than they need to, to meet their prob-
3 lems.

4 Senator Buckley. It seems to me that they would like to
5 have the Federal Government billed a 100%.

6 Senator Muskie. If it is a 100%, I think they might over-
7 build.

8 Senator Buckley. I would not like my comments earlier to
9 be considered a ratification of the concept of 75%. I really
10 have strong reservations about increasing the Federal contri-
11 bution at this time for the reasons spelled out by the Admin-
12 istration, inflationary, and ability of the system to cure the
13 problem.

14 Senator Muskie. I think the issue is really the question
15 of what do we think we need to do to get the program moving.
16 Up to now, it has been a failure of the Federal Government to
17 fund and so, any reluctance or inability on the part of muni-
18 cipalities to fund has not emerged and has not been disclosed.

19 Senator Buckley. I am for funding of the Federal obli-
20 gation, but the question then is should we raise the amount of
21 that obligation.

22 Senator Muskie. What I see of the difficulty of the fi-
23 nancial bind in which municipalities find themselves and which
24 is providing pressures for revenue sharing, I think their prob-
25 ably is a problem whether or not they could come up with the

1 kind of sharing that they now get especially in states which
2 do not participate because in those states, the Federal share
3 is 30% and the communities have to put up 70%. I just can't
4 see the communities moving to do this sort of a job in that
5 kind of a financial bind.

6 Senator Buckley. Isn't that where the financing provisions
7 would move into help those communities?

8 Senator Muskie. I don't think so, because those communi-
9 ties who find themselves in this bind, who can still meet
10 bonds and still have a market in the private market, can do so,
11 but feel they must do so for schools and other pressing needs
12 before they move ahead on this sort of a problem. In other
13 words, it is a question of priorities that many communities
14 tend to settle by opting for the school problem rather than this
15 problem and 70% municipal load is a might heavy one for them
16 to bear.

17 Mr. Jorling. One of the comments that the League of
18 Cities pointed out regularly, including in their testimony when
19 we received it, was that there are several Federal programs
20 which provide a higher Federal match than the present water
21 pollution program. When they are faced with the choice, when
22 there is a time of unemployment of getting Federal programs
23 that will employ people into their communities, they close the
24 one which brings the highest return and normally these are
25 highway programs, education programs, and we had a list. And

1 I should cover it, airports and several others, that have 75
2 or higher percent grants, so that even though the need for
3 treating water pollution is present, other considerations dic-
4 tate that they match the high return Federal program than a
5 lesser Federal return program so they feel that if the national
6 priority is one of achieving pollution control, then Federal
7 share should match some of the other Federal programs so they
8 don't have to make a difficult choice between something that
9 might not be as productive in a social sense, but in immediate
10 sense brings more money to their community. So, they made a
11 very strong pitch for the increase, they in fact wanted 90-10
12 funding.

13 Senator Muskie. It is the lowest Federal participation, I
14 think of any program, and we chose it for two reasons, one,
15 because of the enormous investment that is involved, and sec-
16 ondly, because we try to build that incentive in which we hope
17 would prod the states to participate. That has not worked in
18 enough states. It has worked in about 32 states.

19 Mr. Billings. Twenty-two states have grant programs and
20 about eight more have loan programs.

21 Senator Muskie. So, it is about thirty. As a result, in
22 the other states, there is only 30% Federal support with the
23 consequences Tom has spelled out. Secondly, you have this ques-
24 tion of the variations in state support, through loan support
25 and through grant support. And those throw the monkey on the

1 municipality's back. What we were ready to accept in '66 was
2 55% Federal support. That is what we hope would be the Federal
3 participation. So when we talk about increasing Federal par-
4 ticipation, we are not really talking about increasing from
5 30%, because what we hoped for was 55% Federal support if the
6 states responded. Now, the states have not. Now, as we reas-
7 sess the program, it seems to me that our real choice is to do
8 what we always felt was Federal obligation of 55% across the
9 board. And, if we do that, we wipe out probably the state sup-
10 port we are now getting, straight across the board Federal sup-
11 port, and I would not like to see that done. I think the only
12 way to get out the maximum Federal support and at the same time,
13 retain whatever support the states are giving is some such
14 formula as we have incorporated. So that is the rationale.

15 Senator Buckley. Yes, I appreciate that. The question is,
16 does it lead us to a 100% Federal participation?

17 Senator Muskie. I have been around here too long to be-
18 lieve that logical conclusions inevitably follow.

19 Mr. Brayman. Could I make two quick points? First of all,
20 I think the average grant now runs around 48, 49% according to
21 my understanding that EPA says they spend an average of 48% of
22 a cost of a facility working out 30, 40, 55. The second point
23 is in conversations with municipalities, obviously, they want
24 a higher percentage grant.

25 There other big stumbling block has been inability to know

1 what kind of funds they count on. This could be overcome with
2 a contract grant formula. Therefore, if they were in effect
3 guaranteed four billion a year, even at lower percentage, they
4 would be in a much better position, I believe, than they would
5 under the former formula, because of the fact they would know
6 what their allocation would be each year. And, therefore,
7 could plan in a much better way to finance any revenue bonds,
8 etc.

9 Senator Muskie. Is the Committee ready for a vote on this?
10 All of these votes are tentative.

11 Senator Boggs. Yes. Let me ask a clarifying question.
12 For example, in Section 202, Leon says 60% of the estimated
13 reasonable cost as determined by the Administrator and so on.
14 Now, does the reasonable cost include cost for separating storm
15 water, and sanitary sewers?

16 Mr. Billings. That would be defined in the term "treat-
17 ment works", Senator Boggs.

18 Senator Boggs. So, there is an answer to that.

19 Mr. Billings. Yes.

20 Senator Muskie. So, it separates it. We are not includ-
21 ing the cost.

22 Mr. Billings. The Committee has to make a determination as
23 to whether or not to include that in the term "treatment works".

24 Senator Boggs. Reasonable cost should include collection
25 systems and that applies.

1 Mr. Billings. Collection systems is not an area that is
2 within the jurisdiction of banking and your Bank Affairs Com-
3 mittee. However, as I understand it, first there has been a
4 very, very strong appeal to this Committee to include the cost
5 of collection systems in this legislation, because of the re-
6 lationship of collection systems to the overall success of the
7 program. Especially in those areas where you have reliance
8 on septic tanks and secondly, because funding for collection
9 sewers has been far, far behind this program, and thirdly,
10 the House is considering it.

11 Senator Boggs. I would be inclined to include it in col-
12 lections systems , especially, where septic tanks are concerned.
13 These are questions we will have to clarify as we go on. I
14 would say in support of my own feeling on this, that we have
15 checked with my own state and in my state, they have reviewed
16 it and support the program formula.

17 They raise some of these questions which we will have to
18 meet later on, however.

19 Senator Muskie. That is right, and they would be raised
20 by the definition of the treatment facilities.

21 Senator Buckley, you might like at some point in part one
22 of this year's hearings, page 680, to look at where the money
23 for waste treatment has gone in terms of size of communities.
24 The table on that page will show you that less than 14% of the
25 three billion of Federal funds that had been granted to

1 communities, have gone to communities over a hundred twenty-
2 five thousand. That is where massive injection of funds is
3 going to have to come and that gives you some indication of the
4 size of the financial burden that the larger cities face in
5 this field and the bulk of the Federal funds has gone to com-
6 munities smaller than that.

7 Senator Buckley. I will look at that with great interest.
8 There is a distinction though, isn't there, in the whole thrust
9 of this Bill, namely, that we are compelling the states through
10 the implementation mechanism to do what is required of them.
11 And, if the states don't come up with something is proper, the
12 Administrator will dictate the policy applicable to the states.
13 This means that one way or another, the states will have to
14 find out how to help these communities.

15 Senator Muskie. This Bill, of course, I don't know what
16 its final form will take, but its intent is to be tougher.

17 Senator Buckley. New York is floating a billion dollar
18 bond issue at the state level.

19 Senator Muskie. Are we ready for the vote on Section 202?

20 Senator Beall. Mr. Chairman, are we considering Section
21 202 as written? I am for 75% and I am for the way you compute
22 the contributions, but I don't think it is unreasonable to have
23 the Administrator make sure that there isn't over-planning.

24 Senator Muskie. We have no objection to that. Unless
25 there is objection, let's assume that in this vote, that a vote

1 for this would include the safeguards to prevent over-building.
2 I don't know what the language would be, but I think that is a
3 reasonable request. I don't see that as a threat to the same
4 extent the Administration does, but I see no reason not to safe-
5 guard against it. Let's ask for a vote then on the construction
6 grant formula.

7 (A vote was taken as follows:)

8 Senator Randolph. Aye.

9 Senator Baker. Voted by proxy. Aye.

10 Senator Beall. Aye.

11 Senator Bentsen. Aye.

12 Senator Boggs. Aye.

13 Senator Buckley. Nay.

14 Senator Montoya. Voted by proxy. Aye.

15 Senator Muskie. Aye.

16 Senator Tunney. Aye.

17 Senator Muskie. It passes, eight to one.

18 All of these issues are subject to reconsideration. We
19 are trying to get some idea to firm up the concept of the Bill.

20 The next issue is the user charge question on pages 10, 11,
21 beginning line 36, page 10, and going over to line 7, page 11.

22 The Staff has substitute language which we have before us.
23 The third item.

24 I think it would be well to read this out loud since it is
25 new to all of us. Maybe I should do it.

1 "Notwithstanding any other provision of this title, before
2 approaching grants for any treatment works under Section 202,
3 the Administrator shall determine that each applicant:

4 1) Has adopted or will adopt a system of charges to as-
5 sure that by July, 1973, each category of recipients of waste
6 treatment services within the applicant's jurisdiction as de-
7 termined by the Administrator will pay the costs of operation,
8 maintenance, expansion, and replacement of any waste treatment
9 services provided by the applicant. 2), as demonstrated to the
10 satisfaction of the Administrator through the provision of re-
11 serve funds, financial commitments or other means, the ability
12 of the applicant to provide for the operation, maintenance, ex-
13 pansion and replacement of existing and future treatment works,
14 and 3), has legal institutional managerial and financial cap-
15 ability to insure adequate construction, operation, maintenance,
16 expansion and replacement of treatment works throughout the
17 applicant's jurisdiction as determined by the Administrator.

18 2) The Administrator shall within 90 days after this Act,
19 promulgate regulations applicable to payment of waste treat-
20 ment costs by industrial and nonindustrial recipients of waste
21 treatment services which shall establish a), classes of users of
22 such services, including categories of industrial users, b),
23 criteria against which to determine the adequacy of charges im-
24 posed on classes or categories of users reflecting all factors
25 that influence the cost of waste treatment, including strength,

1 volume and delivery flow rate characteristics of waste, and c),
2 model systems and rates of user charges typical of various
3 treatment works serving municipality industrial communities.

4 3) No new sources, the construction of which is com-
5 menced after July 1, 1972, shall be allowed to connect to any
6 treatment works assisted by a grant made pursuant to this Act
7 unless the owner or operator of such new source agrees to re-
8 pay the portion of the cost of the construction of such work
9 attributable to such new source.

10 4) Revenues derived from the recovery of costs from in-
11 dustrial users of sewage treatment services as determined by
12 the Administrator to the extent costs are related to the Fed-
13 eral share of eligible costs provided pursuant to this title
14 shall be transmitted to the Administrator and deposited by him
15 in miscellaneous receipts of the Treasury of the U. S."

16 This draft represents a solution to the problem I raised
17 yesterday with the Staff, and that is the question of level of
18 user charges for industrial and nonindustrial users. In the
19 Committee print, it is clear in one place that user charges
20 shall not reflect the initial cost of construction, the reason
21 being that to include that factor would in the judgment of the
22 Staff raise the level of user charges to a prohibitive level.
23 Nevertheless, I felt that insofar as industrial users are con-
24 cerned, that the initial cost of construction should be borne
25 by them, and that they then in connection with their ongoing

1 user charges be subject to the same basis for determining user
2 charges as other users, in other words, operation, maintenance,
3 expansion, and so on. And so there is separate treatment as
4 you will note on the second page of this modification of the
5 costs of construction question which imposes an obligations
6 upon industrial users, new industrial users to assume that cost
7 of construction. I assume that could include in addition to
8 their user charges some other agreement or form of repayment.
9 That is the philosophy I asked the Staff to put in here, be-
10 cause that represents what I think is a reasonable stance on
11 waste treatment facilities that are available to industrial us-
12 ers.

13 The Committee, of course, may have a different view.

14 Senator Tunney. Mr. Chairman, I think the draft is some-
15 what unclear as to whether all of the user charges that are col-
16 lected are paid to the Federal Government before any of the us-
17 er charges can be used to retire the obligation of the muni-
18 cipalities or of the states. Is that what is intended, to have
19 all of the user charges go to the Federal Government before
20 any of them can be used to retire obligations?

21 If so, I think it ought to state that.

22 Senator Muskie. It seems to me, the Federal Government
23 ought to recover only the Federal share of the original cost
24 of construction.

25 Senator Tunney. Prorata, but do all of the user charges

1 in the front end go to pay off Federal Government or does the
2 Federal Government only get prorata share?

3 Senator Muskie. This does not provide for recovery of cost
4 of construction by means of user charges. As I see Subpara-
5 graph 3, it simply provides that there must be an agreement for
6 repayment. That could include I assume, a periodic repayment
7 which would be in the nature of an addition to the user charge.

8 Mr. Billings. For new sources, it would relate to the
9 cost of construction, but for existing sources, it would not.
10 The Staff has made a distinction between those sources which
11 exist and those sources which do not.

12 Senator Tunney. But there are maintenance expenses and re-
13 placement expenses.

14 There are ongoing maintenance expenses.

15 Senator Muskie. Presumably, as of January 1, next year,
16 whatever plants have been constructed, the arrangements have
17 already been made with respect to the industrial users of those
18 services.

19 Mr. Billings. As to the repayment to the Federal Treasury,
20 as to new sources, when those new sources did connect and agree
21 to repay the cost of construction, the report would specify
22 that repayment cost of construction related to the Federal
23 share would be made on prorata basis and the Administrator
24 could so set forth in his regulations. I think that would
25 solve the problem.

1 Senator Bentsen. Mr. Chairman, let me ask something about
2 the question Senator Tunney raised there. He said "replacement
3 cost". What is the philosophy of the legislation so far as to
4 depreciation. You return the investment to the Federal Govern-
5 ment on a new installation, but do you do anything about depre-
6 ciation or replacement?

7 Mr. Billings. In terms of the language, the municipality
8 would be taking care in its user charges for setting aside.
9 However, it intended to handle the money, an amount equal to the
10 cost of replacing the total project. Its user charges would be
11 doing it. It would not be setting aside a part relative to the
12 construction cost, but to replacement, so at the time that pro-
13 ject was no longer functioning, whether it was depreciated out,
14 whatever it happened to be, the community would be able to re-
15 place the entire cost without additional Federal grant.

16 Senator Bentsen. The user charge is high enough to take
17 care of replacement cost in the future, plus Federal Government
18 participation.

19 Mr. Billings. In that future project, yes.

20 Senator Muskie. For an industrial user, it includes the
21 replacement?

22 Senator Bentsen. That is correct. That is my point

23 Senator Beall. What is a new source? I am referring to
24 Section 3.

25 Mr. Billings. That is not defined, sir.

1 Senator Beall. Don't you think we ought to define it? Is
2 it an individual home?

3 Mr. Billings. It could be a residential development, sir.
4 Senator Beall. Could it be an individual home?

5 Mr. Billings. Yes.

6 Senator Beall. How does the local authority go about ad-
7 justing a user charge in that case when each individual home is
8 constructed?

9 Mr. Meyer. I think if it was an individual home construc-
10 tion, Senator, it would be a hookup charge kind of thing. The
11 problem is that the developer comes in and puts up a thousand
12 homes. That is eventually going to be reflected back individual-
13 ly to each house for the cost of the house, but those thousand
14 homes being added to the treatment facility will create the kind
15 of problems that we are going to run into in the Blue Plains
16 Plant in the metropolitan area.

17 Senator Beall. Suppose you build a facility and you know
18 that the initial operation has to be about 70% of capacity, but
19 still at the time you go into operation, you have to set your
20 charges to pay the ongoing cost as if it were operating at a
21 hundred percent of capacity, don't you? So as you add new sour-
22 ces, what do you do with level charge to the new people and old
23 people, because their prorata share is reducing now. So, how do
24 you legislate these adjustments?

25 Senator Muskie. I think that is rather difficult to do.

1 Senator Beall. Don't you have to make some provision for
2 it?

3 Mr. Meyer. I think the concept imbodyed in paragraph 3, is
4 a lump sum payment by the developer or the industrial operator
5 and after that, they come in with the same user charges that
6 everybody else has. This is an attempt to provide a capital in-
7 crement.

8 Senator Muskie. What bothers me here, and I had not looked
9 at paragraph 3, in the light of the problem Senator Beall raised,
10 to pay that cost of construction attributable to such new sources.
11 The plant is already in existence. None of that cost of con-
12 structior is attributable to the new sources that was not anti-
13 cipated when that was built. So, I think the standard of meas-
14 urement is a little unrealistic, and you don't know when that
15 new source of a thousand new homes comes on the line whether
16 this can be met out of the capacity of the existing plant or
17 whether it will increase its future needs and future needs of
18 replacement or its immediate needs for expansion, and so on,
19 And, there are so many possible answers to the pollution load or
20 to the capability for meeting the pollution load of new sources
21 that it does not seem to me you can put that kind of a test on
22 it.

23 Shouldn't you be saying rather that there should be some
24 payment which reflects the cost of providing the services? I
25 don't see how you can go beyond that.

1 There are so many ways of meeting the costs, and there may
2 be no immediate outlay by the local agency. It may be able to
3 meet it out of its reserve of capacity and indeed, I think the
4 planning of its reserve capacity ought to be measured by anti-
5 cipated growth to some degree.

6 Mr. Meyer. The problem, and this was again a Staff concept
7 the problem that you run into is when the new plant begins to
8 arrive at the 90 to 95 or 95 to 100 percent of capacity. The
9 new installations coming along on line will be either foreclosed
10 until the plant is changed to accommodate them, or there is go-
11 ing to be an overload. The question is, if you build the plant
12 now, under an implementation plan that has a forecast, and you
13 build to take care of what you have, plus the foreseeable in-
14 crease, anybody coming in, the private decision making that
15 goes into what kind of a load is going to be put in the waste
16 treatment plant is put in at all of the public's expense until
17 you arrive at the end of the capacity; and I think this is what
18 this is attempting to do, is to enable the communities to make
19 some balanced decisions.

20 Senator Muskie. I understand the objective. I am ques-
21 tioning the language that is used to implement it. It ought to
22 reflect that there ought to be a charge and that charge ought to
23 reflect the cost including capital cost of providing the treat-
24 ment services whenever those capital costs are incurred in the
25 past, present or future. You have to make some kind of judgment

1 in each of those situations.

2 Mr. Meyer. If the language were changed to say that pro-
3 vision shall be made for, that would take care of the problem.

4 Senator Muskie. That is right. This is done with every
5 water works. I am trying to put my summer place on the local
6 water works, and it is going to cost me \$5,000 just to hookup.
7 Well, you have to pay them, and that is customary in water works.
8 And, that should be here, and that is what you are saying. That
9 there should be some connection charge that reflects the cost
10 of providing the services. Is there any objection to that con-
11 cept?

12 Senator Tunney. I am not sure I understand your concept.
13 For all sources?

14 Senator Boggs. That is industrial, private and otherwise?

15 Senator Tunney. That is all new sources after the date
16 which is January 1, 1972.

17 Mr. Meyer. It could be after date of the approval of the
18 plans and specifications.

19 Senator Muskie. After July 1, 1972, the new sources are
20 going to come on line with reference to particular treatment
21 plants after the new plants are built and the first people on
22 line are going to pay the original user charges. Isn't that
23 right?

24 Mr. Meyer. Maybe it should be --

25 Senator Muskie. which do not include the cost of the

1 original capital construction by the earlier formula in the first
2 part of the language.

3 Mr. Meyer. Section 203 of the title provides for approval
4 by the Administrator of the plans and specifications and esti-
5 mates of each facility before the grant is made so maybe it
6 should be new sources as of the date of approval of the plans,
7 specifications and estimates, because then they know what they
8 are going to have to do from what they have got and you just
9 make provision then for eventual replacement for all new sources
10 which come in after the plans have been approved and construction
11 begins.

12 Senator Muskie. Yes, but there is an ambiguity in the ref-
13 erence in the phrase "new source " because the new source is not
14 after this legislation is enacted, but a new source after a
15 waste treatment plant has been build and user charges have been
16 imposed upon the users in existence at the time the plant goes
17 into operation. The new sources in that case refers to new
18 sources built after that time.

19 Mr. Billings. That is right.

20 Senator Muskie. But, with this language in here by making
21 January 1, 1972, as the reference point for new sources, then
22 you are treating the new sources as the original participants in
23 the treatment services which I don't think is your intention.

24 Mr. Meyer. We will redraft it and resubmit it for consid-
25 eration.

1 Senator Muskie. In other words, what we are trying to set
2 up here is a structure, which when a new treatment plant goes on
3 the line, imposes user charges on all users in the community as
4 of that time reflecting operation, maintenance, replacement and
5 expansion, but not original cost of construction. That is the
6 measure for that user charge. After that, when new users after
7 that come on the line, then their user charges must be related
8 to a connection charge which reflect the cost, including the cost
9 of the construction.

10 Senator Buckley. Doesn't that create a stampede to get in
11 there under the line?

12 Senator Muskie. Well, the net effect ought to be the same
13 because the replacement cost isn't going to be too far from the
14 connection charge for the new users really. It is just that the
15 replacement problem will be bigger because of the new users and
16 that has to be taken into account.

17 Mr. Billings. This says new source, construction of new
18 source. New source of construction of which is commenced after.
19 Any new source that exists at the time, is not going to be cov-
20 ered with capital cost.

21 Senator Muskie. That is an ambiguity. You see the point.
22 Let's not get caught up in trying to rewrite the language here.
23 We understand the concept.

24 Senator Bentsen. Look at the word "utilized by such new
25 source" rather than "attributable to such new source".

1 Senator Muskie. The fourth paragraph has to be clarified
2 because it doesn't seem to me, unless you want a broader concept
3 than I had in mind, what I had in mind was simply returning to
4 the Federal Treasury, the original cost of the construction at-
5 tributable to the cost of the industrial part of the plant, the
6 Federal Government's share of that cost.

7 Mr. Meyer. That is in all cases.

8 Mr. Billings. This is where the community recovers it and
9 it has to go back. If the community does not try to recover it,
10 obviously, it does not go back.

11 Senator Muskie. This is setting the policy whether or not
12 industrial users shall assume the cost of construction.

13 Senator Boggs. It would have to be equal to all.

14 Senator Muskie. Don't we want that applicable to all in-
15 dustrial users?

16 Senator Boggs. I don't see how you could make that work
17 otherwise.

18 Mr. Billings. That is a policy decision the members have
19 to make.

20 Senator Muskie. That is right. That is a policy we have
21 to make, whether all industrial users should participate in the
22 original construction, should they or should they not be required
23 to assume the cost of building in the capacity to deal with their
24 problems.

25 Senator Boggs. Starting after the enactment of this

1 legislation. Anything that has happened before, that is over the
2 board.

3 Senator Muskie. I think they should be. Their prorata
4 share.

5 Mr. Meyer. Existing industrial sources or new industrial
6 sources?

7 Senator Muskie. Well, existing or new. If an existing
8 source does it, that isn't now served by municipal waste treat-
9 ment plants, and is subsequently served by one that is built,
10 then I think it ought to be required to pick up its share of the
11 cost of the construction.

12 Senator Boggs. But if it is already being served, the ar-
13 rangements have already been made.

14 Mr. Meyer. Only for waste treatment plants that grants are
15 made after this Act, do you worry about this?

16 Mr. Billings. This language says you have to have system-
17 wide user charges. If you are the community of New York and you
18 come in for a big Federal grant.

19 I am saying, if you come in for a Federal grant after the
20 date of enactment of this Act, you don't have to have user
21 charges for that single plant. You have to have system-wide set
22 of user charges so you can't single out this 2,500 people living
23 over here and subject them to user charges and let other 7,500
24 people not pay it.

25 Mr. Jordan. What do you do about all of the communities

1 that are under 150,000 people who have new plants? Whether they
2 have user charge systems is a matter of indifference to the Sub-
3 committee, right?

4 Senator Muskie. The user charges would apply to all people
5 serviced by treatment plants.

6 Mr. Jordan. Only new project. The Administrator shall
7 approve?

8 Senator Muskie. The objective of the user charge is to
9 hopefully eliminate the need for Federal programs at some point
10 in the future.

11 Mr. Jordan. What would we do with a project completed last
12 year? They won't be coming in for a new grant.

13 Senator Muskie. All this asks them to do is, build in a
14 system of user charges which they retain.

15 Mr. Jordan. I submit that it doesn't say that.

16 Senator Muskie. It should be clarified if that is the case.

17 Mr. Billings. I don't know how you can enforce it. The
18 community that has a Federal grant already is not going to be
19 forced to put on user charges unless it comes in with a new
20 grant.

21 Senator Muskie. If they do come in and ask, that system of
22 user charges has to apply to all of the sewage treatment ser-
23 vices they provide, whether constructed under the new grant or
24 old program, because only in that way can they build up the re-
25 serves necessary to keep their whole system current and

1 up-to-date.

2 Mr. Jordan. What do you do in the case of a project re-
3 cently completed where there will be no new application by the
4 communities?

5 Senator Muskie. That is beyond our control.

6 Senator Tunney. There is ambiguity because of reimburse-
7 ment because we are going to reimburse an amount of money to
8 those communities for the waste treatment plants that were con-
9 structed within the last five years so you have in a sense, a
10 bonus given under the reimbursement.

11 Senator Muskie. That is an obligations we have given since
12 then. I don't think we ought to change the obligation.

13 Senator Tunney. We are talking in this law about reimburse-
14 ment.

15 Senator Muskie. An additional reimbursement. I suppose it
16 is a question whether we want to make user charges a condition
17 of that additional reimbursement. That poses the other question,
18 how do you impose the same condition upon those who built treat-
19 ment facilities and have gotten fifty percent Federal grants,
20 and won't get that additional reimbursement, how do you achieve
21 equity as between them and the communities who get that addition-
22 al reimbursement.

23 Mr. Meyer. Mr. Chairman, you can put the user charge re-
24 imbursement in the implementation plan language which then re-
25 quires it for all of the areas anyhow with respect to waste

1 treatment facilities that there be user charges and you can pret-
2 ty much repeat the language of the user charge language. Then
3 each implementation plan for the community has to provide this
4 service.

5 Senator Muskie. Yes, you can do it that way.

6 Senator Eagleton. I am trying to focus on this point. Sup-
7 pose you have a city which has a fairly modern plant that cost
8 a \$1000,000,000 and it is being used and is a good plant. A cou-
9 ple of years from now, it needs to add a small addition to that
10 plant to update it for \$5,000,000. This is not a very big thing
11 compared to what they already have, and they asked for a grant
12 under the Act, Federal share. Then they have to go to user
13 charges across the board, is that it. Even though it is a tiny
14 addition to a huge plant? If they want the grant, that is the
15 price they have to pay for the grant. Is that right, a user
16 charge across the board?

17 I just want to understand.

18 Senator Muskie. Another way of dealing with it is to deal
19 with this problem in the implementation plan which makes it
20 clear what we try to institute under this program is a system of
21 user charges across the country that would make the Federal as-
22 sistance at this point sensible and also build into the system
23 a capacity for providing for future expansion and growth and re-
24 placement.

25 Senator Eagleton. I am not against it, because the --

1 Senator Muskie. If you put it in the implementation plan,
2 then you have to choose anyway.

3 Mr. Billings. Mr. Chairman, I think it has been pointed
4 out before, many, many communities are going increasingly to
5 revenue bonds to fund their municipal waste treatment facilities.
6 And revenue bonds are going to be backed by user charges any-
7 way, so what we are imposing here may not be nearly the burden
8 that it appears to be.

9 Senator Muskie. I think it is an inevitability in most
10 communities.

11 Senator Eagleton. I wish they would go to user charges.

12 Senator Muskie. It is sooner or later coming and it is
13 better I think to write it in now. Let's consider the question
14 of putting it into the implementation plant.

15 Let's hear the Administration's position on that.

16 Mr. Jorling. The Administration's position on the assess-
17 ment of user charges for the construction costs of that portion
18 of the construction relatable to the industry use, is that they
19 should be recovered as the Bill provides, but that their recov-
20 ery should be to the Treasury only in the event the community
21 doesn't agree to use the monies recovered for purposes of water
22 quality in that community. They have a requirement in their
23 Bill, which they support in their most recent comment: "Treat-
24 ment of user charges for all users in operation, maintenance,
25 expansion, and replacement". Then they go on and say "No grant

1 shall be made for any project which will treat industrial wastes
2 of a liquid nature unless grantee makes provision satisfactory
3 to the Administrator in accordance with regulations promulgated
4 by him from industrial users of the project for that portion of
5 estimated reasonable cost of such project as determined by the
6 Administrator which is allocable to treatment of such industrial
7 wastes. The amount of estimated reasonable project costs recov-
8 ered shall be based equitably on proportion of which volume and
9 strengths of such user waste treated by project bears to the tot-
10 al volume of waste, revenues derived from such costs recovered
11 to the extent of and apportionable to Federal share. Such costs
12 allocable to treatment shall revert to Treasury of the U. S. un-
13 less the grantee has, or in accordance with regulations to be
14 promulgated, made satisfactory provisions for developing a user
15 charge system or other legal institutional manager to insure
16 adequate replacement of treatment works throughout grantee's
17 jurisdiction, in which such case revenues may be retained by
18 grantee to assist in providing financial capability referred to
19 in this subparagraph."

20 What they have stated to us is that blanket requirement
21 would inhibit local selfsufficiency. The proposal would have
22 left fees in the hands of the communities to, etc., with that
23 caveat, if they agree to use the revenues for these other pur-
24 poses, then they would not be required to revert to the Treasury.
25 So the Administration's position is that there should be a re-
covery from industrial users on the construction costs, and they

1 should revert to the Treasury unless the community agrees to
2 spend them to enhance their water quality program.

3 Senator Muskie. The one question I raise about that is
4 that it would seem there is inequities between communities which
5 have industrial participants and those that do not because in
6 the case of communities which have industrial participants, in
7 effect, what you would be doing is providing that original Fed-
8 eral grants twice to the community, once to build the industrial
9 share of the plants capacity, and secondly, in the form of re-
10 turn for that industrial user to the communities as a bonus.
11 That kind of a bonus is not available to a community which does
12 not have industrial participants. That is what troubles me a-
13 bout that approach.

14 Mr. Jorling. That is an element and I think it is an un-
15 avoidable one if the decision was made to go that way. The one
16 aspect that might be looked upon as policy consideration to
17 allow it would be that best water quality management is achieved
18 when you have joint municipal and industrial treatment to the
19 extent possible. And this would encourage it, assuming com-
20 patible waste, which is an issue we can address when we get to
21 pretreatment standards. If you have compatible waste generated
22 by industry, they should be treated in a municipal system. And
23 this would encourage that. One of the things industry has com-
24 municated to us in response to the print, is that there are
25 some communities which resist for reasons of their own not

1 related to water quality management, to revenue, or anything
2 else, just resist the including industrial service in their
3 treatment system. And they in fact, have in some instances, the
4 steel industry, for instance, has asked that we mandate that a
5 community can not turn down compatible wastes in a treatment
6 system. This kind of, a sort of, bonus by allowing industries
7 to come in and having the community derive some benefit thereby
8 might encourage all communities to match to the maximum extents
9 possible compatible wastes.

10 Senator Muskie. Consider the problem. The town where I
11 was born pays half of the taxes. Let's say it produced half of
12 the pollution load, maybe more than half, but for purposes of
13 consideration, and I think they want to build a compatible plant.
14 Then the Federal Government would pick up half of that or put up
15 half of the money to build in the industrial capacity. That is
16 half of the cost of the plant. Then as the plant repayed that
17 cost, then that half of the cost would go to the municipality.

18 In effect, handing the municipality a gift of the cost of
19 the replacement of the plant at some point in the future.

20 Mr. Jorling. In addition to the already accumulated user
21 charge.

22 Senator Muskie. That is a pretty handsome gift, an incen-
23 tive, as compared to the town next-door, and it is the town right
24 across the river, which would not have that industrial bonus a-
25 (

available, even though its people work in the plant, live in that

1 town, contribute to its domestic welfare, and so on.

2 It is a pretty inequitable treatment.

3 Senator Boggs. You might put it in a regional concept.

4 Senator Muskie. You might have a regional plant which
5 would offset that but nevertheless, you are going to have com-
6 munities which are going to go out and look for industries with
7 compatible wastes so they can get the bonus.

8 Senator Tunney. On the other hand, the town across the way
9 does not have to pay anything back in user charges.

10 Senator Muskie. They have to have user charges. In the
11 first town the domestic user, the household user is not going to
12 be paying any user charges related to the industrial capacity.

13 Senator Tunney. But the town with industry gets a benefit
14 in a sense for the industry, but it also has gotten the benefit
15 for nonindustry because nonindustry does not have to pay back
16 in user charges to the Federal Government for cost of construc-
17 tion, so I don't quite follow the logic that you are giving an
18 additional bonus. You have a Federal program which makes the
19 waste treatment plant available to it.

20 Senator Muskie. Let's say it would cost \$5,000,000 to
21 build the plant to cover the domestic user, another \$5,000,000
22 to add industrial capacity, total cost \$10,000,000. Under the
23 policy we are talking about, \$5,000,000 to build the industrial
24 capacity has to be repayed by the industry. Under my concept,
25 (that \$5,000,000 comes back to the Federal Government. Under the

1 concept of the Administration that \$5,000,000 goes to the muni-
2 cipality in effect, lifting off the backs of the municipality
3 the \$5,000,000 for building the domestic side of the plant.

4 Senator Tunney. But they have to use it for user --

5 Senator Muskie. User charges are already provided for
6 building in the new works. Either that additional \$5,000,000
7 builds up their reserve or has the effect of reducing user
8 charges. In either case, the domestic user in that town gets
9 benefit of a gift that the users in a town which does not have
10 that kind of bonus does not get.

11 Senator Tunney. I don't understand the Administration's
12 language then because I didn't think you could use it for paying
13 off the user charges.

14 Senator Muskie. It says it goes back into the municipality
15 for new works. However, the community uses it, they get \$5,000,-
16 000 that they would not otherwise get.

17 Senator Tunney. If the city across the way is not expand-
18 ing, can they come to the Federal Government and get the same
19 amount?

20 Senator Muskie. Then you go through the same process over
21 again. Regarding the question of whether the \$5,000,000 goes
22 back to the Federal Government, I don't have any particular bias
23 for getting it back to the Federal Government. I am talking
24 about discrimination to the communities.

25 Senator Tunney. I would agree with you if it was going to

1 be used to pay off the cost of the municipal components or if it
2 could be used for reserves, but if it were going to be used for
3 new construction, then I don't see how it places that industrial
4 town in any situation that is different from the town across the
5 river that does not have any industry because as they expand,
6 they can come to the Federal Government under this Bill and get
7 seventy-five percent.

8 Senator Muskie. That community gets a lift that another
9 community doesn't get. In another community there could be a
10 need for expansion or new construction or paying off reserves
11 or any of those purposes. They are going to have to do it
12 through user charges in all cases. This is an additional re-
13 quirement. If it weren't for the inequity, I have no objection
14 to the money going to communities rather than the Federal Govern-
15 ment, but I am concerned about the inequity. And I think there
16 is one.

17 Senator Bentsen. Mr. Chairman, we will have an opportunity
18 to come back in with amendments?

19 Senator Muskie. Surely.

20 Senator Beall. How about having a compromise where the
21 money would go to states and the states could use it to help
22 those communities where they have exorbitant user charges. Some
23 communities are going to have very high user charges.

24 Senator Muskie. That is a possibility I suppose. If there
25 were an inequity between states on that account, it would not

1 be advisable but it might be there. Heavily industrial states
2 would stand to gain more than others.

3 Senator Boggs. Along that same concept, I wish there were
4 someway to figure out how to encourage the regional approach. I
5 am thinking in terms of my own little state. We have relatively
6 large numbers of small municipalities, and we are trying to en-
7 courage right now, right in the middle of it, the countie con-
8 cept to tie in all of the little municipalities into the county
9 system. And we have some resistance from the larger places like
10 Dover, but many of the small communities wouldn't be able to
11 handle it on their own, and we have to get a countywide system.

12 Some of the smaller communities are purely residential, you
13 might say with no industry in them at all. And yet industry is
14 outside of them now really going into the county where they have
15 parking space.

16 Senator Muskis. May I ask, in order to proceed with some
17 decisions, whether we could reserve that question for what would
18 be used for repayment of the cost of the industrial capacity and
19 get a vote on other aspects of this proposal at the present time.
20 I think there is some room for creative thinking, and I would
21 like to reserve it. I would like to think about the proposal
22 that Senator Beall just made.

23 Senator Randolph. Mr. Chairman, I presume the concern of
24 Senator Tunney is accentuated by the tremendous number of com-
25 munities in a state like California. Is this correct?

1 Senator Tunney. That is my feeling, and Mr. Chairman, my
2 feeling is that where you have industry in a community which
3 would enable the city to apply the user charges of the industry
4 to the development of new waste treatment plants, you would have
5 a situation where industry in a sense would be helping to pay
6 for the waste treatment plant of the civil population. And I
7 don't think there is anything wrong with that. I think what you
8 are doing is encouraging industry to contributed a greater share
9 to the waste treatment works, new waste treatment works to take
10 care of municipal needs. And, I don't see why that is a bad
11 concept because it is not a bonus really.

12 Industry is going to be paying for new waste treatment
13 works that are going to help municipalities, where there is in-
14 dustry in those municipalities.

15 Senator Muskie. Of course, industry will because industry
16 is a taxpayer. Let's take my home town again. That paper mill
17 does pay half of the taxes so if the industry repays the cost of
18 construction of the industrial capacity of that plant, that is
19 half of it, but in addition, it pays half of the taxes. So it
20 would have to pay half of the cost of the domestic capacity in
21 the plant. So that industry would be paying seventy-five per-
22 cent of the cost. Only fifty percent of the capacity of which
23 would be devoted to the industrial wastes. So industry will be
24 paying for the civil side or the domestic side of the capacity
25 of the plant in any case. Now, we are talking about an

1 additional break that is not available to a community which has
2 an industry without compatible wastes, and so on. The factor of
3 different treatment is still there.

4 Senator Tunney. But municipal user charges are not capital
5 construction. Municipal user charges are exclusively for main-
6 tenance and for replacement.

7 Senator Muskie. I am talking about the community's share
8 of the cost of construction, that is, whether it is going to be
9 ten, fifteen, and it could be as high as forty percent of the
10 municipal share of the cost of construction. The industry pays
11 some proportion of that as a taxpayer in the community and of
12 capital costs, as well as, the other part of the costs. Again,
13 I have no objection to that. I am talking about discrimination
14 or inequity as between the domestic users in one town as against
15 the domestic users of another town.

16 Senator Tunney. But it is only new construction coming on
17 the line. It is not to retire any bonds, it can't be used for
18 reserves, it is for new construction.

19 Senator Muskie. But even as to that, that then lifts the
20 burden of the municipal costs of new construction from those do-
21 mestic users in towns which have a compatible plant as against
22 those which do not.

23 That is the inequity. I am not arguing for relieving in-
24 dustry of anything. I am talking about giving equal treatment
25 to domestic rate payers and users.

1 Senator Tunney. It is fractionally different.

2 Senator Muskie. It would not be fractionally different in
3 the example I posed, and that would be a very common example in
4 my state. And with states where individual industrial users are
5 a smaller proportion of the total pollution load, then the in-
6 dividual industrial users might not; but overall, when you take
7 a heavily industrialized city such as Houston, for example, that
8 bonus can be very considerable.

9 Mr. Jorling. If you had two communities, each of which had
10 requirement to build 100 unit plants, and one had fifty percent
11 industrial components, the other community had no industrial com-
12 ponents, and assuming that all of the wastes were treated exactly
13 the same and there was no disparity in the measure of user charge,
14 industry would be paying in the first community fifty percent of
15 the operation, maintenance, and replacement user charge. And in
16 the second community where there would be no industrial compon-
17 ents into that town, the domestic user would bear the entire cost.
18 At the same time, the first community would be picking up users,
19 which represents that portion of the Federal share attributable
20 to that community. So that community would pick up in addition,
21 37.5 units that the other community would not.

22 I think that is what the Chairman is discussing, which is a
23 lift to that community that this community does not have avail-
24 able because it will not be recovering any money from any indus-
25 trial users under the requirement that you recover capital costs

1 to the extent attributed by the Federal share.

2 Senator Tunney. As I understand, that is for new construc-
3 tion and is not to pay off anything that has been paid for origi-
4 nally under this Act.

5 Mr. Jorling. It would be limited to provide for, well, it
6 could be used, I think, for operation, maintenance, and expan-
7 sion, as well, under the Administration's Bill.

8 Which means they could use that amount of money for oper-
9 ation and maintenance and reduce to their domestic users.

10 Senator Tunney. I was thinking of new construction and it
11 seems to me in industrial communities you ought to be trying to
12 encourage new construction as much as possible. And, I think
13 those communities who do not have alot of industry the need is
14 not as great and that is my own attitude and I will withhold any
15 further argument.

16 Senator Muskie. I think if we think that kind of incentive
17 ought to be available to provide for new construction, why should
18 we not provide it in all communities, whether they have compatible
19 industrial waste sources or noncompatible.

20 The other question that has surfaced in our discussions here
21 is whether or not we ought to require the total cost of construc-
22 tion where the capacity share should be recovered.

23 It seems to me that ought to be recovered. That portion,
24 of course, would go into the local kitty. It would not go to the
25 Federal Government.

1 Senator Buckley. The state and local community would not
2 be precluded from imposing that.

3 Senator Muskie. It is a question of whether we should re-
4 quire it. If we require it for recovery of the Federal share of
5 the cost, shouldn't we require it for recovery of all of the
6 share or should we leave it to the community. I am afraid in
7 smaller communities you may get some industrial blackmail here.

8 I am wondering if you should not require the cost of recov-
9 ery and that portion of it which represents the state and local
10 share would be disposed of in accordance with state and local
11 law. If Federal share, subject to whatever modification you make
12 in that concept, the Federal share either returned to the Fed-
13 eral Treasury or left to the community.

14 Is that what we ought to write into it? It seems to me we
15 should. I think we should mandate recovery of the industrial
16 share of the cost.

17 I don't know why we should not make it clear that they are
18 expected to repay to Federal, state and local governments their
19 respective share of their cost of construction.

20 Senator Boggs. Leave that agreement on repayment as to
21 time and how up to the local government to make?

22 Senator Muskie. That is right. Can we then reserve into
23 one question about how we use the Federal share, can we have a
24 vote on the rest of it?

25 Senator Cooper. May I ask two questions. One is on the

1 proposed language.

2 Senator Muskie. Would you excuse me, I have to leave for
3 another appointment and the Staff will remain. We will be back
4 here at 2:00 o'clock to resume.

5 Thank you very much. I think it has been a good morning.

6 Senator Cooper. This provide any new source agrees to re-
7 pay that portion of cost of construction of such work attribut-
8 able to such new source. Does that mean considering the whole
9 life of the amortization of the obligation? Would it mean the
10 period of the amortization left after he ties on to the system?

11 For example, suppose you have thirty year term and a new
12 source comes on in the year '75, under this language he may be
13 required to pay the five year period? That is a technical ques-
14 tion.

15 Mr. Jorling. It is the kind of question that was directed
16 at the Staff earlier, and which caused us to be directed to re-
17 quire that to provide discretion to the Administrator to make
18 a requirement that provision be made that the new user must pay
19 a charge related to the connection costs and the operation and
20 maintenance costs strributable to his input rather than this
21 rigid formula that appears here. So, for example, he would have
22 to pay for the cost of tying in an then a user charge based u-
23 pon the remaining five years of amortization of that particular
24 facility.

25 Senator Cooper. I suppose likewise with respect to the

1 other provisions it would be permissible for municipalities to
2 change the cost as the class might change and the volume and
3 number might change.

4 Senator Eagleton. I take it there was general agreement on
5 this earlier Section, subject to the rethinking of the colloquy.
6 And shall we recess until 2:00 o'clock and then we will take up
7 the reimbursement provisions.

8 We will recess until 2:00 o'clock.

9 (Whereupon, at 12:00 noon, the meeting recessed, to recon-
10 vene at 2:00 p.m., the same day.)
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1 (The Subcommittee reconvened at 2:30 p.m., Senator Edmund S.
2 Muskie, chairman of the subcommittee, presiding.)

3 Senator Muskie. We will resume with a discussion of the
4 reimbursement procedure.

5 Senator Cooper. For what purposes would retroactive pay-
6 ments be directed toward?

7 Is that payment of debt on construction of new facilities?

8 Senator Muskie. That is right. It is limited to repayment
9 of debt associated with construction of plants or construction
10 of new plants. In other words, it would enlarge the Federal con-
11 tribution to new construction or would provide for Federal par-
12 ticipation in retiring debt on old construction.

13 Senator Cooper. I will hold myself open on it.

14 Mr. Billings. The estimated amount is one billion five,
15 under the Committee print.

16 Senator Tunney. Some of it is contractual, four hundred
17 million for largess, one billion five, including the contractual
18 obligations.

19 Mr. Billings. Total amount would be 1.536 billion, which
20 four hundred million would be new money. 1.536 billion of which
21 four hundred million would be money not presently owed to states
22 like New York, Maryland and Maine, which have proceeded a head-
23 on basis of the old reimbursement features so the net cost of
24 raising all states to fifty percent would be four hundred million
25 dollars over what Federal Government presently owes.

1 Senator Buckley. Mr. Chairman, are we on Section 206?

2 Senator Muskie. The grant formula.

3 Senator Buckley. Is the whole Section open for discussion?

4 Senator Muskie. Yes.

5 Senator Buckley. In line 13, this seems to write in a fifty
6 percent ceiling. I would like to suggest after the word "cost"
7 "fifty percent of the cost or percentage to which it is entitled,
8 whichever is greater."

9 Senator Muskie. I think it should be fifty percent. Leon
10 says fifty-five percent.

11 Senator Buckley. Some states proceeded on the basis --

12 Senator Muskie. Was the bonus for regional planning re-
13 lated to any state response?

14 Mr. Billings. No, but I think Senator Buckley's point is
15 well taken. If we limit it without the language he has and New
16 York's eligibility under the existing reimbursement procedure
17 provision would be reduced because this repeals the existing re-
18 imbursement provision. So, if you use the language which he says
19 or to which the state would have been entitled, you preserve
20 those states which went ahead and would have been eligible for
21 fifty-five percent under reimbursement.

22 Senator Muskie. Under that reimbursement provision, I have
23 no objection, but under the other reimbursement provision, which
24 is bring people up to the standard that is fifty percent, yes.

25 Senator Buckley. A similar change would be made in line 22.

1 "Or the percentage to which it is entitled, whichever is
2 greater."

3 No, that isn't quite correct, because we are repealing the
4 other. You know the problem.

5 Mr. Billings. The percentage to which it would have been
6 entitled under the old provision.

7 Senator Buckley. The other point I had was on line 15,
8 where it talks about funds used, I suggest substituting a word
9 "comitted" for "used", because alot of contract have been let
10 out but funds not dispersed.

11 Mr. Billings. You would put that language you read on both
12 line 22 and line 13?

13 Senator Buckley. That is right.

14 Mr. Billings. Then we are talking about commitments.

15 Senator Boggs. Could I state, use its reimbursement for new
16 fifteen percent grants to communities to qualify those commun-
17 ities for a new Federal seventy-five percent grant?

18 There is no reason why they couldn't, is there?

19 Could a state use its reimbursement, it has to be used as
20 you mentioned, but no objection to using it under the new law
21 for its new fifteen percent grants to communities to qualify
22 those communities for a new Federal seventy-five percent grant.

23 There is no reason why they could not use it.

24 Senator Muskie. I would not think so because you would have
25 a double advantage.

1 Senator Boggs. If you could not, you would have to write
2 a restriction to make it plain that they couldn't.

3 Senator Muskie. Isn't it plain now, they can use it to
4 retire a debt or for new construction.

5 Senator Boggs. This is new construction from a state's
6 point of view?

7 Mr. Billings. The question would be who is eligible to
8 receive funds of reimbursement. If funds for reimbursement go
9 to a local government which is what your intent is, then it
10 would not.

11 Senator Muskie. It doesn't seem to me that they should be
12 able to, Caleb, because otherwise, you are giving them a double
13 advantage.

14 Senator Boggs. I agree, but I don't think that is neces-
15 sarily what we want to do, but on the other hand, do you think
16 there is sufficient limitation here?

17 Mr. Billings. I think the amount of reimbursement would
18 have to go on the basis of treatment works. The reason state
19 has to be in there on line 19 is, for example, the state of New
20 Hampshire assumed responsibility of construction treatment works.

21 Senator Boggs. But how many states have put money into it
22 all ready?

23 Mr. Billings. Twenty-two, but they would not get into it
24 that way. We will have to check and see if that language limits
25 the application of reimbursement to the constructor of the

1 treatment works.

2 Senator Boggs. I raise the question.

3 Senator Muskie. Let's try to refine that. Of course, in
4 effect, they put it in one pocket and take it out of another, but
5 if they try to make a direct flow from the Federal Government to
6 this objective, it seems to me that really --

7 Mr. Billings. In the case of prefinancing, where this re-
8 imbursement is going to states like New York, they could use it
9 for anything they wanted to, but in the case of where it is going
10 to communities, that would be a different matter.

11 Senator Muskie. Let's go on to the other subjects. We
12 can't deal with this one until Senator Eagleton is here.

13 I would like to get on to the question of national minimum
14 water quality standards, which is Item Number 7, pages 18 and
15 19.

16 Senator Cooper. I don't want to interrupt, but, one reason
17 I have been busy, is that I have been trying to get agreement to
18 vote at 3:30 on the extension of Appalachia Development Act, the
19 Public Works Development Act, and with an additional sum for ac-
20 celerated public works of five million dollars.

21 We have reached an agreement, I understand, and that is the
22 one reason that I say that I have to go again about twenty after
23 when there will be a roll call vote.

24 Senator Muskie. The Staff has provided a copy of Senator
25 Tunney's regrite, page 18, top of page 19, paragraph 2.

1 Senator Tunney. Mr. Chairman, if you would like, I could
2 go over the requote briefly.

3 Senator Muskie. I wonder if it might be helpful first to
4 go into the questions that are raised by the original language
5 which I take it the requote is intended to meet at least in
6 part.

7 Senator Tunney. Last night, much to the credit of the Staff
8 of this Committee, I worked over some of these problems with
9 them and they were here very late in the evening and I wanted
10 the Staff to know that I deeply appreciate their attention to
11 this problem because it was far beyond the call of duty. I
12 became convinced over the last several weeks of discussion with
13 the people in industry and with people in the environmental so-
14 cieties that are deeply concerned about having a national stand-
15 ard, that we ought to have a national standard, but it also
16 seemed to be very clear that we could not have a really meaning-
17 ful national standard unless we had some exceptions.

18 The way the national standard is worded in this rewrite
19 draft, it would provide two different deadlines, one deadline,
20 July 1, 1977, would apply to point sources of pollution, muni-
21 cipal and industrial pollution, and then July 1, 1980, would
22 apply to nonpoint sources such as acid, mine drainage, the
23 agricultural problems, and the problems that result from con-
24 struction when you have soil washed off of the land into a water
25 way. Now, there are -- now, we have language with these

1 proposed amendments that suggest the national minimum standard,
2 but we have not gotten language. And I haven't drawn up lan-
3 guage for the exceptions, but I would like briefly to discuss
4 why my concept is with regard to the exceptions. I think that
5 to begin with, that you would have to have solid substantial
6 grounds for having an exception. It ought to be a unique sit-
7 uation. It ought not be be an exception that is granted because
8 it would be difficult to meet the national standard. I think
9 there are several different types of exceptions.

10 One would be with regard to manmade physical characteristics
11 of land use decisions. The fact that you might have a port where
12 there is a heavy use of the port by shipping or canal where there
13 is heavy use.

14 Another exception would be concentrations of point source
15 pollution that is so dense that the standard just could not be
16 reached without a serious misordering of national priorities.

17 Another exception would be where the technology just has
18 not been developed yet.

19 Another exception would be national security, for instance,
20 in those ports where you have a naval fleet that is in harbor,
21 we have them in San Diego and San Francisco. And it would be
22 wrong from the naval security vantage point to ask that fleet
23 to move out of the harbor. Although, I think that certainly the
24 Department of Defense should do far more to make provisions for
25 the elimination of the effluent or at least the treatment of the

1 effluent until it goes into the bay than they have done in the
2 past.

3 But, these would be areas where you would have exceptions,
4 and you would have to have a very substantive showing that these
5 exceptions were needed.

6 Now, with regard to the procedures that you go through in
7 granting the exceptions, it seems to me you would start off with
8 the state implementation plan. When the state offers the im-
9 plementation plan, they would have to make it clear that certain
10 bodies of water and certain water ways should be excepted. And
11 they should give the reason and justification, the fact that the
12 technology has not been developed, the fact that it would pro-
13 duce a serious economic or social cost that the society would
14 not want to pay at this time. That would then go to the Direc-
15 tor, the Administrator of EPA as the implementation plans ordi-
16 narily would go. EPA would then have to make an evaluation of
17 those exceptions. EPA would then determine which exceptions
18 would be allowed. Once EPA made a determination that exceptions
19 were going to be allowed, it would seem to me that EPA should
20 refer those exceptions to the Congress and that if the Congress
21 did not act within sixty days to reject the exceptions, that have
22 been approved by EPA, those exceptions would be then effected.

23 It seems to me that the exceptions should only last for a
24 period of five years and after that five year period is con-
25 cluded, then the state should have to go once again through the

1 whole process of having hearings, you know, public hearings, and
2 then make another evaluation that still those conditions exist
3 which make an exception necessary.

4 Then, we would have to be approved once again by Adminis-
5 trator of EPA, and then come to the Congress again. This would
6 then give to the Administrator and to the states and Congress
7 an opportunity every five years to determine whether or not that
8 exception should apply to that specific body of water. I think
9 that it ought to be developed in the legislation that where there
10 is an exception, that the Administrator of EPA should give Re-
11 search and Development Fund priority to developing the technology
12 to clean up those water ways to standard where they could meet
13 the national standard.

14 It would be an encouragement to focus attention on the ex-
15 ceptions with Research and Development Grants and finally, I
16 think that where you have the exceptions, it should be clear
17 that that should not restrict the Administrator of EPA from re-
18 quiring that that particular water way be cleaned up to the
19 highest possible standard. Even though it can not meet the
20 national standard. In other words, we don't want retrogression
21 because they can't meet the national standard. They would be
22 required to do whatever is feasible to achieve a higher standard
23 even though it falls short of the national standard.

24 My own feeling is that if we don't have a national standard
25 and a time table to achieve that national standard, we are just

1 not going to be able to focus our energies in the way that we
2 should. And, I think that in all of these projects that we have
3 had in recent years where we have to use a high state of tech-
4 nology to achieve a goal and massive funding to achieve a goal,
5 it is quite clear that a target date is essential if you are
6 going to be able to really galvanize local communities and gal-
7 vanize the scientific community and to galvanize, I thin, the
8 resources of the Governm^ent so that basically is the philosophy
9 behind the national standard, the target date to achieve the
10 national standard and the exceptions that i have suggested would
11 be granted if the national standard were accepted by the Commit-
12 tee.

13 Senator Muskie. I think there are a number of questions
14 that are raised by the original language and maybe to some ex-
15 tent by the whole substitute language. The Staff suggest that
16 these questions are:

- 17 1) Is the proposed standard meaningful?
- 18 2) Is it economically justified?
- 19 3) Is it efficacious?
- 20 4) Can it be achieved?

21 On the first question of whether it is meaningful, there is
22 an effort to sharpen it in that connection, but for example, in
23 the Committee print language, the language is "which shall pro-
24 vide for the protection of any indigenous shellfish, fish, and
25 wildlife."

1 Well, if you have a stream in which the wildlife has all
2 been destroyed or at least driven away, is there any fish and
3 wildlife that is indigenous to it? So if there is no wildlife
4 indigenous to it, then are you accepting the standard of an open
5 sewer for such streams? I don't know whether this change in
6 language is proposed to overcome that difficulty or not, but it
7 reads "The protection of a balanced population of naturally re-
8 ccurring shellfish, fish and wildlife."

9 Does that mean waterways in which there is no wild life at
10 the present time that they should be required to stock and then
11 protect it?

12 Mr. Billings. That is essentially yes. That is the idea
13 behind the language of naturally occurring.

14 Senator Muskie. If it is not naturally occurring now in
15 its presently polluted condition, what obligation does this lan-
16 guage impose?

17 Mr. Billings. The intent of the language, which was devel-
18 oped with Dr. Allen Hirsch from EPA who worked on the criteria,
19 who described the levels of water quality which support various
20 kinds of fish and wildlife, and so on, is tracked with that cri-
21 teria so that you get back to the point where, yes, if you have
22 wiped out a stream, then you would have to bring back to some
23 acceptable level of a balanced population.

24 Senator Muskie. Is the purpose of this legislation for us
25 to restore the natural wildlife?

1 Senator Buckley. I think if you would say "to permit a
2 balanced mix of shellfish", they you would let nature take her
3 course once the quality of the water allowed organisms to live.

4 Senator Muskie. Well, that is the economic price.

5 Senator Tunney. Where you have to provide for the protec-
6 tion of, I think it may assume that the community might want to
7 restock waterways. But I don't have any problem at all with
8 that. That is fine. I think that one of the reasons that I
9 felt we ought to take out the word "indigenous" is precisely the
10 reason that has been suggested, that we might not know what the
11 indigenous fish were or what the indigenous wildlife was because
12 of the pollution of the stream over a period of years.

13 Senator Muskie. I think it is still ambiguous and to make
14 it clear, you would have to say "to make it possible to restore
15 the shellfish, fish and wildlife that once occupied the water-
16 way when it was pure in a pristine sense".

17 Senator Tunney. Do you want to do that though?

18 Senator Muskie. If that is what you mean, you ought to say
19 it.

20 Senator Tunney. No, that is not what I mean, because I
21 think it would be very difficult to take a stream which now sup-
22 ports carp and move it back to a trout stream if you don't know
23 that the trout were there because nobody can remember because of
24 the destruction over a long period of time.

25 I think once you clean up the waterway --

1 Senator Muskie. What I am saying is that if your objective
2 is to restore the stream to a state or purity that it had when
3 such wildlife inhabited it, it is really immaterial except from
4 those who are interested in the rewards that you get from the
5 cost and effort, whether or not they actually do reinhabit it.
6 If they don't reinhabit, what is the justification of restoring
7 it to such a state of purity?

8 Senator Cooper. If you use "naturally occurring" in the
9 same sense as indigenous, that might be the answer.

10 Senator Tunney. Well, I think, Senator, that necessarily
11 in language of this kind, you are going to have some ambiguity.
12 I suppose that we could have looked it up and say that eighty
13 percent of the indigenous shellfish, fish or wildlife, seventy-
14 five percent was suggested by one of the environmental action
15 groups, but I thought that by providing a balanced population
16 of naturally occurring shellfish, fish and wildlife, indicates
17 that what you want to try and do is restore an area to as nat-
18 ural an environmental setting as possible. And I think that if
19 you are too precise, you really defeat the purpose of trying to
20 create a balance of ecology, a balanced environment, assuming
21 that you have fish and you assume that you have a food chain
22 which will provide food for the fish to develop.

23 And, I am not sure that we can ever get back to where we
24 were in 1600. But I think on the other hand, if you have a bal-
25 anced population of sort of naturally occurring fish life, that

1 the essence of the meaning is there, and I don't think that it
2 really is a degradation standard.

3 Senator Muskie. Why don't you just say what you seem to
4 mean, forgetting the fish and wildlife business, that the objec-
5 tive is to restore every waterway to its pristine purity.

6 Senator Tunney. I don't think that can be done.

7 Senator Muskie. Well, that is what you are saying.

8 If what you are saying is to restore it to the natural con-
9 dition, which makes possible the habitation of fish and wild-
10 life --

11 Senator Tunney. Maybe a population of naturally occurring
12 shellfish, fish and wildlife could today be carp rather than
13 trout.

14 Senator Muskie. Well, you could imagine all kinds of lower
15 orders that you might not want, but you have to have sufficient
16 precision, John, to know what the target of water quality is.

17 If you get away from what was once natural to what becomes
18 natural at some level of water degradation, then you have no
19 standard. What you are talking about is that state of purity
20 that will support any state of life that might be attracted to
21 it. I can think of some kinds of wildlife that appeared in some
22 deteriorated main streams that we would just as soon did not re-
23 appear.

24 I think either you have to relate it to the kind of wild-
25 life that once prevailed in that area or you have to use some

1 other standard to make it meaningful. On the Kennebec River for
2 example, you still see Kennebec Salmon on hotel menus. There
3 has not been a Kennebec Salmon caught in this century out of the
4 river. For two reasons, pollution and dams. In order to restore
5 the Kennebec to the condition it once held with respect to the
6 Salmon, of which Arnold fed on his march to Quebec, you would
7 have to eliminate the dams as well as the pollution.

8 Senator Tunney. But that is not suggested.

9 Senator Muskie. I am not saying it is suggested. What I
10 am saying is that, if you are trying to define the water quality
11 objective in terms of some state of naturally occurring wildlife,
12 then either it relates to what was natural at some point or it
13 doesn't. To relate it to some intermediate stage where a new
14 species was attracted by the deteriorated quality of the water,
15 I think is to establish a pretty uncertain standard it seems to
16 me.

17 Senator Tunney. I am prepared to say "to have a balanced
18 population of indigenous shellfish, fish and wildlife."

19 Senator Muskie. Why don't you say "pristine purity of the
20 stream".

21 Senator Tunney. Pristine purity of the stream is poetic,
22 but I am not exactly sure that it can be done.

23 Senator Muskie. Or "its natural purity".

24 Senator Tunney. Natural purity is fine.

25 Senator Muskie. In other words, we are going to restore

1 the waterways of the country to what they were when Columbus
2 came over.

3 What I am talking about is its original purity, if you will.
4 if there was ever such a thing. I suppose you would have to
5 predate it to the Indians. But, is that realistic, John, to
6 say that by 1980, every waterway in this country will be re-
7 stored to its natural purity or original purity?

8 Senator Tunney. Well, I think this is the reason that we
9 decided that it would be advisable to be just a bit vague in the
10 standard because I think a balanced population of naturally oc-
11 ccurring shellfish, fish and wildlife certainly make it very clear
12 that what you want is a balanced ecology, not a situation such
13 as you have in San Francisco Bay where we are beginning to lose
14 a substantial number of our shrimp because of pollution. And
15 as is occurring along the coast of California, where you are los-
16 ing your fish catch and the fishing industry is going out of
17 existence simply because of offshore pollution.

18 I think that where you have protection of a balanced pop-
19 ulation of naturally occurring shellfish, fish and wildlife, it
20 makes it very clear that what you want to have is an opportunity
21 for fish and shellfish and wildlife to reproduce where you have
22 a significant clean up in your waterways.

23 Senator Muskie. For what kind of wildlife?

24 Senator Tunney. The naturally occurring wildlife.

25 Senator Muskie. What do you mean by naturally occurring?

1 Senator Tunney. Well, what do you mean by reasonable in
2 a criminal code or tort code?

3 Senator Muskie. Natural to what?

4 Senator Tunney. Natural to the area.

5 Senator Muskie. In the streams in Maine that I have in
6 mind, there is only one fish that is natural to that area that
7 occurred as a result of the forces of nature before man inter-
8 fered, which is Brook Trout or Kennebeck Salmon. All right,
9 that is the fish that naturally occurred indigenous to the area,
10 but I gather that isn't what your target is and it is the il-
11 lusiveness of the alternative target that puzzles me.

12 Senator Tunney. Well, the trouble is that if you are going
13 to go back to the time of the Indians --

14 Senator Muskie. I wasn't alive then, John.

15 Senator Tunney. That is why you can't do it. But I think
16 that is reasonable to expect a balanced population of shellfish,
17 fish and wildlife and Senator Buckley has just made a suggestion
18 that we eliminate "naturally occurring".

19 Senator Buckley. Toward a balanced population.

20 Senator Muskie. Does that mean that the Administrators of
21 these programs have to test every waterway to find out what
22 forms of wildlife they can introduce which will survive, which
23 will be balanced in order to identify the water quality level
24 that they have to establish?

25 Senator Buckley. With all due respect, I think you are

? moving it from the wrong end. We are saying that you reduce the
2 toxicity of the program on water to a point where organisms will
3 survive.

4 Senator Muskie. What organisms? You will find testimony
5 in the hearing of this Committee in 1963, disclosing, and I am
6 sure it is still available from other sources, disclosing that
7 there is a wide range in the conditions that will support one
8 form of fish life and another form of fish life, temperature,
9 oxygen content, and so on. And those are specific objective
10 tests of the quality.

11 When you write this in, what do you mean? What standard
12 has to be met by the polluters, that which will support if you
13 clean it up enough and if you had a tough Administrator, Brook
14 Trout, or if you had a lax Administrator, who preferred Catfish
15 anyway. That which would support Catfish? You would have pre-
16 sumably a balanced ecology of wildlife, and so on, with entirely
17 different perimeters in terms of oxygen content, water flow, the
18 temperature of the water, and so on.

19 If you just write that kind of a loose standard in here,
20 what are you mandating?

21 Senator Beall. Am I to assume that Chesapeake Bay, because
22 it produces oysters, crabs and rockfish, has already met the
23 standard, and we don't have to be concerned about moving by 1980
24 because we already have a standard?

25 Senator Muskie. You have clam beds. The clams still grow,

1 but they are not edible but they still grow.

2 Senator Tunney. The trouble is that if you start attempt-
3 ing to be too specific as to the standards that you are going to
4 achieve concerning a certain amount of bacteria in the water, I
5 think that your whole concept of national standard falls.

6 Senator Muskie. John, the details are important.

7 Senator Tunney. Yes, I recognize that details are terribly
8 important, but you have written all through Federal legislation
9 secondary treatment. What does secondary treatment mean to you?

10 Senator Muskie. It has an accepted meaning with respect to
11 domestic waste. Perimeters of it are sufficiently accepted so
12 it can be implemented administratively.

13 Senator Tunney. That is not true, Ed.

14 Senator Muskie. We have not written it into law either.

15 Senator Tunney. EPA suggests that because secondary treat-
16 ment, the use of secondary treatment is so vague in their mind
17 that they are not going to use it anymore.

18 Senator Muskie. We have not written it into law.

19 Mr. Billings. We are proposing it here, but it has not yet
20 been written into our print.

21 Senator Muskie. It may be too vague to write into law.

22 Senator Bentsen. Mr. Chairman, did we get a proposal from
23 the Administration on this?

24 Senator Boggs. As I understand it, the Administration is
25 not opposed to realistic target dates for achieving compliance

1 with effluent limitations or point sources of pollution such as
2 municipal and industrial wastes. However, they seem opposed to
3 the imposition of deadlines for control of pollution from non-
4 point sources such as combined sewer overflows, acid mine drain-
5 age, agricultural runoff, etc. And, are opposed to deadlines
6 for compliance with ambient water quality criteria. The inabil-
7 ity to set unrealistic target date for point source pollution
8 makes it impossible to set deadlines for compliance since non-
9 source point pollution is important determinate of end stream
10 quality and relationships between end stream quality and various
11 pollutions sources is not fully understood.

12 In addition, if a national minimum standard is required,
13 there appears to be little place for state adoption of standards.
14 All that would be needed would be an exception provision enabling
15 the states to apply to establish more stringent standards.

16 Now, we question whether the national minimum standard can
17 reasonably be achieved by a fixed date.

18 I don't know whether that answer is your question or not.
19 There are certain waters where accomplishment of a standard
20 would not be a reasonable goal within a foreseeable future.

21 Senator Muskie. That covers some points that we haven't
22 raised yet in our discussion which I think are legislative
23 points.

24 Senator Boggs. But in talking about this point, I know of
25 creeks that run out in Delaware Bay where there are fish and

1 oysters, but you can't eat them. And they have to get them and
2 dump them in the Bay and let them be outh there for a season
3 before the Board of Health will clear them for domestic consump-
4 tion or interstate commerce. But yet the water is so polluted
5 that you actually can not swim in it and yet there are fish in
6 there and oysters.

7 Senator Muskie. Some of you may have read about the pris-
8 tine streams and it has been given great prominence in the in-
9 ternational news. The aligned pollution by a sugar beet refin-
10 ery, which doesn't happen to be a case, but there is pollution
11 by potato processing plants and one of the tests of the owner of
12 the plant suggests from time to time, every so often he goes
13 down and fishes out a couple of trout, and trout are indigenous
14 to that area. The fact that they happen to survive in the mess
15 is a pure accident, but they do.

16 Senator Tunney. Can I read you a paragraph from Environ-
17 mental Action which commented on the original indigenous nation-
18 al standard goal? The enforcement capability of the national
19 standard rests in ability to define the rule clearly. We feel
20 indigenous is too vague a reference point. It is not clear
21 whether it refers to present indigenous such as slug worm or
22 higher forms of life, also, is to be considered.

23 We would recommend the following. Page 19, line 6 insert
24 "for the protection of substantially all of each aquatic and
25 wildlife species native to the waters in their natural condition

1 but in any case not less than seventy-five percent of such spe-
2 cies." A standard based on similar calculations has been adopted
3 by Delaware River Basin Authority. Much of the necessary re-
4 search and determinations to reach such a standard could well
5 be a primary mission of the proposed natural environment lab-
6 oratories.

7 So apparently, the standard is being used by Delaware River
8 Basin Authority and I don't see any reason why --

9 Senator Muskie. What connection? Do you have a deadline
10 on that sort of thing?

11 Senator Boggs. Not to my knowledge.

12 Mr. Brayman. Jim writes by 1977 that they anticipate that
13 there will be in the Delaware River fish that have not be there
14 for 25 years. They have gone about it by a system where the
15 shad will be able to go up river farther than they have gone.

16 Senator Boggs. That is a goal.

17 Mr. Brayman. They have achieved it by a standard that said
18 everybody has to cut back their fishing by eighty-five percent,
19 and if the City of Philadelphia achieves its compliance deadline,
20 they should meet this by '76 or '77. That has nothing to do
21 with swimming. They haven't really addressed the question of
22 swimming particularly around Philadelphia and areas where they
23 assume swimming would not necessarily be something that they
24 think one would want to do.

25 Senator Muskie. How do they translate this standard that

1 John has read from that letter into the specific requirements
2 with respect to oxygen content and so on?

3 How do they translate that?

4 Mr. Brayman. I can't recall offhand.

5 Mr. Billings. They have a waste loading scheme of how much
6 DOD each waste source can discharge and it is on a time table.
7 And they have divided the river and figured out the capacity of
8 the river to support the kind of shad and then given a quota to
9 each source plus holding back certain amounts for expansion, but
10 I don't know how they deal with the question of land runoff. I
11 assume, according to the people from EPA, this is quite a prob-
12 lem because it may be that the river on any given nonrainy day
13 could support certain kinds of indigenous fish, but when you get
14 a kind of runoff that you get in the Potomac, then you completely
15 charge the structure of the stream.

16 Senator. Boggs. And alot depends on the drought of the
17 season and the fresh water coming down.

18 Senator Muskie. You might get that range out of the Dela-
19 ware River. I would like to know what extent they rely on that
20 definition as the standard which tells a polluter what his per-
21 formance has to be and secondly, whether there is a deadline to
22 which achievement in those terms.

23 Mr. Billings. Would you be able to eat those shad?

24 Senator Boggs. The shad run up there pretty far, as a mat-
25 ter of fact, and they had a feast a couple of years ago that I

1 attended and the shad was good, but everybody thought the could
2 taste the oil in them. Everybody thought because there had been
3 oil up and down there for so many years and alot of people said
4 that is all in your head. But they caught them off there.

5 Senator Cooper. The national minimum water quality stand-
6 ards shall be that level of water quality identified by criteria
7 published pursuant to Section 301, either as originally drafted
8 or the draft that is proposed, seems to leave a good deal of
9 leeway to the establishment of criteria. Would that in itself
10 take care of this problem or is the clause "that criteria shall
11 provide for the protection of conditions for fish and wildlife"
12 controlling. My point is that you are arguing an interesting
13 point, but in fact, doesn't the reference to 301 leave it to the
14 states and to the Administrator to take into account these var-
15 ious factors which we are talking about?

16 Senator Tunney. Except that 301, I think, John, is quite
17 vague. It does not have a point in reference. It does not have
18 a point of reference, for instance, of swimming or boating or
19 for fish and wildlife standard.

20 Senator Cooper. I think normally the Administrator would
21 look at these factors and then determine that.

22 Senator Tunney. I think the state should have primary re-
23 sponsibility for doing that.

24 Senator Cooper. I noted that we have all kinds of factors.
25 It may be impossible to return to the pristine condition, but if

1 the criteria established the kind of ground rules, it seems to
2 me that we could take into account these various factors.

3 Senator Tunney. One of the problems we were trying to meet
4 with the fish and wildlife component in the national standard
5 is that you could make the Potomac River swimmable by dumping
6 alot of clorox into it and then everybody can swim in it, but
7 you have a clorox stream and that is why we felt that there
8 ought to be a component of fish and wildlife to make it clear
9 that you don't want to turn a waterway into a clorox pond. That
10 you are trying to create an understanding that you need more in-
11 volved than just bacteria counts. I don't know how you can ap-
12 proach the problem unless you have fish and wildlife involved in
13 the national standard in some way. And, apparently the Delaware
14 River Basin Authority has felt they could do it. I don't know
15 why this legislation can't do the same thing even though we may
16 not have it as precise as we would like. But there are many
17 provisions in the Bill that are unprecise.

18 I asked EPA to define secondary treatment. They said secon-
19 dary treatment by definition of the term is second phase of
20 treatment system in the conventional waste water treatment sys-
21 tem this is the biological process of pouring micro-organisms
22 to remove organic matters. In specifying particular abatement
23 requirements from municipalities, the term assumes a new con-
24 notation. It is now defined as a complete treatment system with
25 final phase process being the secondary phase. This system will

1 achieve efficiency of removal of biochemical oxygen between
2 seventy-five and ninety-five percent, a vast variation. This
3 leads to defining secondary treatment in terms of removal of.
4 The term secondary treatment has such wide ranging use in the
5 pollution control field that it would be impossible to eliminate

6 However, the Environmental Protection Agency intends to
7 circumvent the term by specifying treatment requirements with-
8 out referring to the term secondary treatment.

9 The term secondary treatment is very vague and it has been
10 used, and isn't the goal now that all municipalities will have
11 to have secondary treatments, isn't that the present goal for
12 point source pollution?

13 Senator Muskie. Not legislatively.

14 Mr. Billings. That is the minimum under the water quality
15 standards guidelines.

16 Senator Tunney. They are to be used under the water quality
17 standard guidelines now.

18 Senator Muskie. But the definition is most important with
19 respect to design and capacity of the waste treatment plant
20 rather than the water quality to be achieved.

21 There is a measure of performance of waste treatment plant
22 which the meaning is more precise.

23 Mr. Billings. The meaning is quite precise.

24 Senator Muskie. In any case, if that is vague, what it
25 suggests to me is that it ought to be tightened, not that we

1 adopt a standard of looseness. Getting back to that Kennebec
2 River of my example, it flows not far from the house where I
3 was raised. And, there is wildlife there. We call them suckers
4 They are fish. They will live on almost no oxygen and they
5 are now naturally occurring under the current state of nature
6 which included a pretty filthy river.

7 Senator Tunney. Can you swim in it?

8 Senator Muskie. You can do it without fatality. You can't
9 do it with pleasure. But you can swim in it.

10 Senator Tunney. In other words, you can't swim in it.
11 This national standard would take care of that situation.

12 Senator Muskie. We used to swim in it. Our parents did
13 not encourage it, but there is no definition of who can swim in
14 it as long as it is humane without dying or incurring risks to
15 your health.

16 Senator Tunney. Do the health authorities allow you to
17 swim in it?

18 Senator Muskie. They didn't do anything about it in those
19 days, John. What I am saying is you have to have some precision
20 to a standard so the test is not the subjective judgment of the
21 Administrator but also the objective evaluation of any corps or
22 anybody who is asked to evaluate the reasonableness of what is
23 being asked. You have to have some kind of precision.

24 Senator Buckley. At the present time, New York State clas-
25 sifies its waters by different uses and one of them is

1 recreation and another one is fish propagation. They must have
2 their perimeters in which they can administer these regulations.
3 I suggest, John, that I will try to dredge up these and make
4 them available to you.

5 Senator Muskie. State classification laws do have them. I
6 think they use oxygen content. There may be some way of making
7 this more precise, but I think you have to get that element in
8 here. And, of course, we will get what we can get on the Dela-
9 ware Basin to see how that fits what you are trying to do. I
10 don't object to searching for such a standard, but I think it
11 has to have some detail to it.

12 When you first utter the phrase, the picture of what you
13 are trying to do comes to everybody's mind, and it is an attrac-
14 tive picture. When you talk about setting a standard against
15 which you can prosecute people, apply enforcement procedures
16 against, and so on, as well as, give plant managers and engineers
17 some standard by which to design their pollution control equip-
18 ment, you have to have something that is pretty precise. I have
19 seen too many and too much variation of the kind of fish life
20 that exists in the same body of water under different conditions
21 to be much attracted by that standard.

22 Leon reminds that there are people who argued before our
23 hearings that conditions they created with their effluents are
24 more enriching to fish life. They don't specify what kind and
25 really they are adding to the ecology. The temperatures, for

1 instance, of the new atomic power plant in Maine, the power
2 companies tell us by warming up that Maine water, we are going
3 to produce more lobsters and clams, but he didn't say what eels
4 we would produce, that we might not want. But we are going to
5 have a balanced ecology under different conditions. Whether
6 or not that new balance contributes anything to Maine's well-
7 being is left undefined.

8 Senator Tunney. Ninety percent of the waterways of the
9 streams in American have been classified for recreational use
10 right now. Now, there is alot of vagueness in a recreational
11 standard. I recognize that.

12 Senator Muskie. That is easy to do when you are dealing
13 with a stream that you are going to protect against degradation,
14 but when you talk about applying to a stream whose degradation
15 you want to remove, then either you are going to return it to
16 its original purity or some point in between. And it is the
17 point in between that is troublesome.

18 Senator Tunney. But more that ninety-five percent of the
19 streams are polluted and yet EPA has classified ninety percent
20 of the streams up to recreational standard with a goal to achieve
21 and the legislative counsel for EPA, I think feels that, al-
22 though I would not say he is the end of all wisdom, but he feels
23 that this is a meaningful standard that could be applied. The
24 swimming is clearly a meaningful standard because you do have in
25 most jurisdictions today health officers who classify beaches

1 and rivers as being acceptable for swimming. And there are
2 thousands of jurisdictions across this country that apply that
3 standard every summer.

4 Senator Muskie. Let's find out what they specify as con-
5 ditions that meet that requirement.

6 Senator Boggs. Mr. Chairman, would you want a report from
7 Hal Brayman on the Delaware River Basin?

8 Senator Muskie. Yes.

9 Mr. Brayman. The river basin, Mr. Chairman, has gone about
10 it in this manner. They have classified in their preamble the
11 waters of the Delaware for several different use classifications.

12 The highest being human consumption, next highest being
13 what they refer to as "preservation maintenance and propagation
14 of fish life" and then recreational standards which can be either
15 boating or swimming and various areas and industrial. Once they
16 classify a reach of the river by these objectives, then they
17 define the quality they want in that river which is essentially
18 where EPA goes about it, temperature, etc.

19 Then they define what kind of effluent controls they will
20 have to get to get that. Then they do it on allocation of
21 poundage of pollution basis to achieve that standard.

22 For instance, all of the river above Trenton has been clas-
23 sified for the propagation and preservation of fish. They ac-
24 tually divide preservation and propagation differently. They
25 need a higher quality of water for propagation than for

1 preservation which they say is to allow fish passage.

2 Senator Muskie. Well, if they can't propagate, are you
3 preserving them?

4 Mr. Brayman. In preserving them you are allowing them to
5 get through so they can get into the propagation area.

6 Senator Muskie. If they can't get through to the propa-
7 gation area, how do they do that? Do you find a way to keep
8 fish alive forever?

9 Mr. Brayman. In other words, they are attempting to reach
10 a level specifically for four parts per million on all of the
11 Delaware and below Trenton or at least a passage all the way up
12 the Delaware. Maybe one side won't but some parts will be four
13 parts per million. This allows fish to get through there.

14 Senator Muskie. What they have done then, is that they have
15 this policy which they have defined in terms of specific require-
16 ments based upon their assumptions as to what will meet that
17 standard, as to what levels of water.

18 Senator Bentsen. Is that by legislation, and allowed by
19 regulating the specifications?

20 Senator Muskie. If we followed their example, we would by
21 regulation direct somebody, the Administrator, to set the perim-
22 eters which would meet in the Administrator's judgment the rhe-
23 torical standard which we are talking about.

24 Let me indicate what that might mean. This is testimony
25 before our Committee on thermal pollution. This is Dr. Donald I.

1 Mount, Director of National Water Quality Laboratory in Duluth.
2 He said, "One can easily envision locations where heat addition
3 would result in fewer bass and more bullheads without the ap-
4 pearance or disappearance of either species, yet if man wishes
5 to harvest bass and not bullheads, the water has been damaged
6 for bass. And therefore, is polluted even though bullheads are
7 considered a excellent fish by many.

8 On the other hand, if bullheads are preferred an undesirable
9 change has not occurred."

10 What I am saying is that we have this kind of administrative
11 discretion to decide. They have to make an initial decision as
12 to what regulations are to permit, and then set their perimeters
13 of oxygen content and all of the rest that Hal has been talking
14 about accordingly. Does that appear to be what they have done,
15 Hal?

16 Mr. Brayman. Yes.

17 Senator Muskie. Let's get on to another issue raised by
18 this language so we can cover as much of it as we can and under-
19 stand as much as we can before we go to vote at 4:00 o'clock.
20 We are still speaking of Senator Tunney's Amendment. This has to
21 deal with the point raised by the Administration of the problem
22 of nonpoint sources. I would like to read, if I may from a memo
23 which Leon prepared for me to discuss this point. And I under-
24 stand you discussed it last night, John, in your meeting. Let
25 me read the whole thing. It is only two pages and maybe it

1 would be useful for all of you to get it and if you would like
2 to have copies of it to read more carefully, fine. All this
3 does is raise the issue.

4 "The standard can be meaningful in terms of what it proposes
5 to do so long as the Committee addresses itself to natural, man-
6 made physical characteristics of streams and to natural and man-
7 made nonpoint sources of pollution. In order for the standard
8 to have meaningful national application, a procedure would have
9 to be adopted which allows exceptions to the standards where
10 physical characteristics, for example, stream flow or depth,
11 prohibited swimming. In other words, should you gear water
12 quality to swimming in those situations, or whether solutions to
13 man-made nonpoint source problems, for example acid mine runoff
14 or previous mercury deposits, were not technically feasible or
15 economically practical."

16 In other words, I can suggest another man-made difficulty
17 from my own experience. These Maine rivers that were used for
18 log driving in the years past have strewn along their bottoms,
19 especially those which now have power dams, sunken logs from the
20 old logging drives. And those are still consuming oxygen from
21 the river and will for sometime in the future. And there isn't
22 much you can do about removing them, you see. That is another
23 sort of conditions.

24 "Senator Tunney will propose to solve the physical charac-
25 teristics problems in the definition of standards and that is

1 what we have been talking about and propose exception procedures
2 where technical and economic limitations inhibit control of non-
3 point sources." That isn't covered yet I take it.

4 Senator Tunney. That is what I said in my original state-
5 ment. That we don't have yet the language. I thought that the
6 Staff would be able to draft up if there was agreement that there
7 should be exceptions because of technical problems and economic
8 and social problems. I think social problems is also a part of
9 it because it may have very well be that the cost of cleaning up
10 acid mine drainage, some people say EPA is going to cost fifteen
11 billion dollars to do that, socially may not be acceptable to
12 the people of this nation and it may very well be that it is not
13 socially acceptable for 20 or 40 or 50 years or maybe a 100 years
14 or maybe forever. The point is that you ought to have some way
15 of getting out from under where you have a social and unaccept-
16 able expenditure.

17 Senator Muskie. Going on with this memo.

18 "The question of economic justification is not addressed in
19 any detail in the meeting last night except to agree that it
20 would be extremely costly to try to achieve in the next decade
21 the degree of pollution control called for by the standard. The
22 cost would increase if the exception procedure were to be strictly
23 ly rather than liberally interpreted because implementation of
24 the standard would require a major investment and such problems
25 as combined sewer overflow, urban surface runoff, construction

1 controls runoff, agricultural waste management, minimum waste
2 control, controls over forest cutting practices, and a host of
3 land use measures, a re-evaluation of the cost of clean water
4 would have to be made. The impact of those expenditures on the
5 price of food and housing, transportation systems, local taxes,
6 and so on, is unknown at this time.

7 It is safe to say that there would be a substantial impact
8 in some areas.

9 The Staff recognizes that future activities should proceed
10 on the basis of water pollution control, but problems such as
11 urban surface runoff, which is magnified by the amount of imper-
12 meable area in any major metropolitan area plus the problem of
13 combined sewer overflows, are not easily solved. Nor, will they
14 be solved in the next few years without a massive injection of
15 public funds.

16 This leads into the third point on the efficacy of the
17 standard. I suggest that while large feed lots, dairy farms, and
18 corporate agricultural operations may be able to afford waste
19 management pollution control technicians, agricultural product
20 pricing is not in general a function of the cost of production.

21 Therefore, the agricultural economy would have to absorb
22 most of these costs. That portion of the agricultural economy
23 which involves a majority of the people and a minority of the
24 production may not be able to absorb the added costs which these
25 controls would require. A new major investment in control of

1 barn waste and field runoff, if enforceable, might well drive
2 these marginal operators off the farm. I think we have learned
3 from the experience of the past twenty years that it is more
4 socially desirable to reverse the flow of marginal operators
5 from the farm to the city. It is certainly more economically
6 desirable for cities as a whole, if not for the marginal farmer.

7 I strongly question the efficacy of a program which would
8 have this effect. And I seriously doubt that marginal farmers
9 and land owners would be any better organized to seek exception
10 from the standard for their streams than they are to influence
11 agricultural product pricing.

12 If the decision is made to eliminate the discharge of cer-
13 tain toxic substances which concentrate in the environment, and
14 which present substantial hazard to the ecological system, if
15 new sources of pollution are brought into substantial control, if
16 proposed effluent limitations substantially reduce the inflow
17 of those pollutants, about which we know little, so that the
18 principal remaining pollutants are those which nature has a ca-
19 pacity to deal with. And, if we have massively reduced the in-
20 troduction of foreign materials into the environment, then there
21 is even greater question as to the efficacy of this standard."

22 In other words, if we have done everything else that this
23 legislation proposes to do, then the question is should we go
24 the extra distance with the costs that are suggest in this memo
25 to meet the standard we are discussing.

1 "Even if the standard is meaningful and economicall just-
2 fiable and even if a case can be made for its efficacy, then the
3 question arises as to whether or not such a standard is achiev-
4 able by a date certain.

5 Technically, there are as mentioned above, certain pllution
6 problems for which technology does not exist or which belies
7 practical solution. However, generally control of man-made non-
8 point sources of pollution is feasible. Sound waste management
9 practices can be applied to most agricultural operations, strip
10 mining activities, and construction operations. In many cases,
11 waste management can be accomplished with a marginal increase in
12 cost. To the non-mechanized marginal farmer, there may be no
13 way to economically justify waste management, but to the mech-
14 anized marginal farmer, redistribution of waste on the land and
15 procontainment of waste is an economic possibility. This does
16 not necessarily mean that the standard is achievable by 1980 or
17 1981.

18 Unlike the point source problems where the Administrator and
19 the states would be able to identify the myriad of municipal and
20 industrial sources of pollution, on the basis of discharge into
21 navigable waterways. There is no simple way of identifying non-
22 point sources. Monitoring would be even more difficult than
23 identification and as a practical enforcement would be a function
24 of both.

25 Assuming that the states and local governments have the

1 capability of setting forth non-point source control procedures
 2 to be adhered to by contractors of major industrial, commercial
 3 and transportation facilities, and assuming that major feed lots
 4 dairy poultry, and other agricultural operations could be iden-
 5 tified through existing inspection mechanisms. It would still
 6 take an immense police force to enforce waste management require-
 7 ment which would be necessary to achieve the 1980 or '81 dead-
 8 line.

9 Perhaps if necessary land use decisions were made by mid-
 10 decade, many of these problems would solve themselves, but ef-
 11 fective implementation would require an increasingly strong Fed-
 12 eral involvement in land use.

13 While there is a need for such an increased Federal involve-
 14 ment, I suggest that it may present some significant political
 15 problems."

16 That is the Staff analysis. We would be glad to district
 17 it. In other words, what this paper raises in addition to the
 18 question of definition of specificity and so on. And we have now
 19 some suggestions on how to deal with that, that we will explore,
 20 there are these other questions of impact, especially the non-
 21 point source area on agriculture, on enforcement problem, and
 22 so on, that we need to take into consideration, I think.

23
 24
 25

(McGill)

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1 Senator Bentsen. Mr. Chairman, at what point would it
2 be relevant to bring up an amendment that deals with the
3 question of the economics on this particular subject?

4 Senator Muskie. As it relates to this?

5 Senator Bentsen. Yes.

6 Senator Muskie. You might as well throw it in now, Lloyd.

7 Senator Bentsen. I have drafted an amendment that goes
8 on page 19, at the line three, following the word standard,
9 I have been trying to find something in the way of language
10 that would help us on this question of economic feasibility
11 without coping out and giving a big loophole where polluters
12 could take advantage of it. So I have tried to come into the
13 back door.

14 The language is as follows: "Provided that in reviewing
15 water quality standards, the Administrator shall consider
16 relevant economic considerations and shall not approve
17 standards or any portion thereof if the cost of attaining such
18 standards bears no reasonable relationship to the benefits to
19 be obtained by imposition of such standards."

20 That still makes it a very tough thing for any possible
21 violator to try to take advantage of this. I think this
22 legislation is one of the most far reaching pieces of legisla-
23 tion that would be passed in a long time.

24 I believe the social implications and economic implica-
25 tions are of such massive consequence and based on limited

1 data base on which we can base our judgments and make our
2 decisions that there has to be something in here to stop the
3 arbitrariness of an Administrator.

4 I must say this is a rather mild limitation but I want
5 to see something at this point in the legislation.

6 Senator Muskie. Without indicating the judgment on the
7 proposal at this point, it would seem to me you might want to
8 consider modifying it by indicating that the benefits to which
9 it refers are not simply economic benefits.

10 Senator Bentsen. That is right. I will buy that.

11 Senator Muskie. Social and whatever broader definition.

12 Senator Bentsen. I have no real pride of authorship here.
13 I am just searching for language that will stop the excesses
14 in the Administration.

15 Senator Tunney. What about technical, too, and the fact
16 that technology may not be developed?

17 Mr. Jordan. Mr. Chairman, could I, off the top of my head,
18 make a general suggestion that has occurred to me?

19 Senator Muskie. Yes.

20 Mr. Jordan. It goes to what Senator Tunney proposed and
21 what Senator Bentsen proposed because EPA has indicated to
22 us that most of the standards that have been submitted and
23 approved, I think the figure is 90 percent of the water waste
24 in the country have recreational use classifications, and what
25 we might consider doing is, rather than setting a national

1 minimum standard, we might simply provide that any standard
2 approved under this Act, that implementation plans shall pro-
3 vide that standards approved under this Act shall be achieved
4 by 1980, unless something like Senator Bentsen's proposal
5 could be demonstrated.

6 That standards approved, which in 90 percent of the cases
7 are recreational standards, would be achieved by ten-year
8 period unless it could be demonstrated that either the
9 technology did not exist in the case of non point sources or
10 that achievement of that standard within that time frame was
11 so disproportionate to the economic and social benefits in-
12 volved that it would be unreasonable.

13 Senator Muskie. What you are suggesting is putting the
14 whole standards question into the implementation language
15 section?

16 Mr. Jordan. We already have the standards either approved
17 or under consideration.

18 Senator Muskie. And provided that could be part of the
19 implementation plans, with the qualifications that you suggest.

20 Mr. Billings. Mr. Chairman, one difficulty is that 90
21 percent of the nation's surface waters are classified recreation
22 al. You must remember that on 14 percent of the nation's sur-
23 face waters are subject to the approved interstate standard
24 procedure so we would be dealing with somewhat of an unknown
25 in that remaining portion which are intrastate as to whether
in order to avoid the costs of meeting that 1980 deadline,

1 the states before submitting the standards downgraded them.

2 That is one problem.

3 The second consideration is that the concept of recrea-
4 tion is not a very meaningful one if a majority of those
5 90 percent are boating. Boating is a very often used cope out
6 and I mean that in every sense of the word for the state who
7 wanted to get a recreational standard against the pressure of
8 the Wildlife groups when standards were set.

9 So they adopted an on-the-water recreational standard which
10 didn't have any body contact at all. You can boat anywhere.

11 Mr. Jordan. We vested in the Secretary of Interior very
12 broad authority to approve standards. We have never had
13 criteria that we have in the Air Act and I gather that most
14 states have proposed fairly stringent water designation
15 standards simply because there has never been any time require-
16 ment on when they implemented them and, if we were to take
17 the standards that have already been approved under the
18 Act and impose a time limitation, we might very well be able
19 to accelerate the progress.

20 Senator Bentsen. Mr. Chairman, this amendment of mine
21 would cover economic and social benefits but I certainly would
22 have no objection to those descriptions being put in there,
23 and I have a comparable amendment that applies on section 303,
24 page 20 and it does the same type of thing.

25 Senator Muskie. Now let me ask you. We have these

1 matters before us and there will be a vote I gather in two or
2 three minutes.

3 I intended to go until five. I suspect it will be close
4 to 4:30 before we get back and there would seem to be no
5 particular point in trying to come back, would there?

6 I would like to ask the staff to provide us with some of
7 these materials in advance, this week sometime, if possible,
8 in connection with Senator Tunney's amendment so that until we
9 settle this one, we are going to be hung up on a number of
10 other provisions.

11 I hope we all address ourselves to it. I have been trying
12 to scratch my head on it and all I have succeeded in doing is
13 raising questions.

14 I think there is some merit to considering putting this
15 into the implementation planning and tying it to some defini-
16 tions of recreation, Fish and Wildlife, and so on, and giving
17 the municipalities some options within the rank of those
18 definitions and then imposing a deadline for the achievement
19 of the standards they select.

20 That may be too loose, I don't know, but I would like to
21 see that framework developed.

22 Maybe some of the rest of you would also.

23 We have in our Maine classification law, which has not
24 been very effective cleanup policy, but nevertheless we do
25 have classifications of different water qualities of definitions

1 which serve these purposes and we have heard of others here,
2 such as the Delaware River Basin compact, and I think we ought
3 to search literature for those definitions which might be
4 helpful in providing the detail of specificity that I think
5 the Tunney amendment needs. That might be helpful.

6 Mr. Billings. Also, Mr. Chairman, I think it would be
7 useful if we could flush out the exception procedure that the
8 Senator suggested so that obviously Senator Bentsen's amendment
9 would be a logical part of that flow of any exception procedure.

10 Senator Muskie. In the implementation plan, for example,
11 just anything out loud, you might have a requirement that the
12 implementation plan identify the maximum standard in terms of
13 specifics that might be achieved by the rhetoric of the Tunney
14 amendment as an objective, and set the time table for its
15 achievement and then give the Administrator review over whether
16 or not they are stretching far enough or their identification
17 of what is feasible in light of the balance of the public
18 interest.

19 In other words, make that a local decision subject to
20 review and then the time table applies.

21 Senator Tunney. Mr. Chairman, I think we would be making
22 a great mistake to suggest that the Congress of the United
23 States can't do as well in specifying a standard as the
24 Delaware Basin can. I think there has got to be some kind of
25 a standard. I really believe that.

1 Senator Muskie. But they do it administratively, John.

2 Senator Tunney. But they have in the preamble a goal
3 and I think if the Delaware Basin can do it, I think the
4 Congress of the United States can do it.

5 Senator Muskie. All I am suggesting is that they did it
6 in the case of the Delaware River Basin policy because they
7 accompanied it by the administrative authority to provide the
8 details as to what it means and that is what I would suggest
9 that we toy with.

10 Senator Tunney. That is what I think that amendment of
11 mine suggests that you are obviously giving to the Administra-
12 tor the ability to make some very tough and specific decisions
13 but if you try and put that into a goal or standard, I think
14 you get so complex and detailed that you never work your
15 way out of it.

16 Senator Muskie. I am not as troubled by specifics as
17 I am by generalities in legislation, so I would like to see
18 some attempts made in any case, at least narrowing the area
19 of administrative discretion. If we are going to have a
20 national policy for us to fish in streams, and I would rather
21 fish for trout than for suckers and I don't want the Adminis-
22 trator to say that I am going to have to fish for suckers,
23 if fishing for trout is an alternative.

24 So apparently there is more experience than we realized
25 before this meeting today that would give us guidance, and

End

1 I ask the staff to "fish" them out and bring them before us.

2 Mr. Billings. The next Executive Session is Monday the
3 26 and we have all day session scheduled for Tuesday the 27th.

4 (Whereupon, at 4:05 p.m., the meeting adjourned, to re-
5 convene at 10:00 a.m., Monday, July 26, 1971.)

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